TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 724.

HARVEY SANDUSKY, APPELLANT,

vs.

THE FIRST NATIONAL BANK OF INDIANAPOLIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 13, 1874.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Thomas Drummond, judge of the seventh judicial circuit, presiding judge, and the Hon. Samuel H. Treat, district judge of said district, associate judge, on Thursday, the twenty-fifth day of June, in the June term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

J. A. JONES, *Clerk.*

HARVEY SANDUSKY
v.
FIRST NATIONAL BANK OF INDIANAPOLIS, Indiana. } Appeal from district court.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, heretofore, to wit, on said twenty-fifth day of June, of the year aforesaid, came said complainant, and filed in the office of the clerk of the circuit court of said district, a certified transcript of papers filed and proceedings thereon had in the district court of said district; which said certified transcript is in the words and figures following, to wit:

2 To the honorable Samuel H. Treat, judge of the district court of the United States for the southern district of Illinois:

The petition of the First National Bank of Indianapolis, of the city of Indianapolis, in the county of Marion and State of Indiana, a corporation existing under and by virtue of laws of the United States of America, respectfully shows:

That she is a creditor of Harvey Sandusky, who, for a period of twelve months next preceeding the date of filing this petition, has resided in Vermilion County, and State of Illinois, [and district aforesaid; that your petitioner's demand is provable against the said Harvey Sandusky in accordance with the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That she believes that said Harvey Sandusky owes debts to an amount exceeding the sum of three hundred dollars; that your petitioner's demand exceeds the amount of two hundred and fifty dollars, and that the nature of your petitioner's demand against the said Harvey Sandusky is as follows:

A promissory note for the sum of twelve thousand dollars, executed by the said Harvey Sandusky, together with George H. Tenery
3 and Aquilla Parker, and made payable to the order of George W. Parker which promissory note aforesaid reads in the words and figures following, to wit:

["$12,000.] INDIANAPOLIS, *June* 30, 1870.

"Ninety days after date, we promise to pay to the order of George W. Parker twelve thousand dollars, and five per cent. thereon for attorney's fees if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws.

"The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and of non-payment of this note,

negotiable and payable at the First National Bank of Indianapolis, with ten per cent. interest after maturity until paid.

"GEO. H. TENERY.
"HARVEY SANDUSKY.
"AQUILLA PARKER."

[U. S. rev. st., $6.00]

And the petitioner says that said George W. Parker, to whom said promissory-note was made payable, afterwards, before maturity of said note, for value received, by his endorsement on the back of said note by the description of "Geo. W. Parker," assigned and endorsed said note to the petitioner.

4 And your petitioner further represents that, within the six calender months next preceeding the date of this petition, the said Harvey Sandusky, being insolvent, and in contemplation of insolvency, did commit an act of bankruptcy within the meaning of said act, to wit: that the said Harvey Sandusky, within the period aforesaid, to wit, at Vermillion County, in said district, on the ninth day of August, A. D. 1871, being possessed of certain real estate, to wit, the east half of the northeast quarter and the southeast quarter of section three, (3,) in township eighteen (18) north, range (12) west, in Vermillion County, Illinois, did make a mortgage of the same to John L. Tencher and Joseph G. English, of Danville, in Vermillion County, Illinois, in the district aforesaid, a copy of which mortgage, marked "Exhibit A," is filed herewith and made a part hereof, with the intent then and thereby to give preference to said John L. Tencher and Joseph G. English, of Danville, in the County of Vermillion, State of Illinois, and district aforesaid, with the fraudulent intent by such disposition of his property to defeat and delay the operation of the bankrupt act. Also, that the said Harvey Sandusky, within the period aforesaid, to wit, at Vermillion County, in said district, on the tenth day of August, A. D. 1871, being possessed of certain real estate, to wit, in the county of Vermillion, in the

5 said State of Illinois, that is to say, the south half of the east half of the southwest quarter of section thirty-four, township nineteen, range twelve (12) west, except 49 a, heretofore deeded to Asa Elliott, (see deed, record "N," page 503.) Also, part of the southeast quarter of section fifteen, township nineteen, range twelve (12,) beginning at the southwest corner of said southeast quarter; thence north to the Big Vermillion River; thence down said stream to the east boundary of the west half of the southeast quarter of said section; thence south with said east boundary to the Big Vermillion River; thence down said stream with east boundary of said quarter-section; thence south to the southeast quarter of said quarter-section; thence west with south boundary of said quarter-section to the beginning, 47 a, more or less: Also, the undivided $\frac{1}{4}$ part of the northeast quarter of the southeast quarter of section 27, township 19, range 12; and the southeast quarter of the southeast quarter and the west half of the southeast quarter of section 27, township 19, range twelve; the east half of the southwest quarter, the southwest quarter of the southwest quarter, the east half of the southeast quarter of section thirty-five, township nineteen, range twelve; the west half of the northeast quarter, the east half of lot two (2) of the northwest quarter, east half of lot

6 (1) of northwest quarter and east half of the southwest quarter of section three, (3,) township eighteen, range twelve, did make a mortgage of the same to J. H. Telford & Co., of LaFayette, Indiana, a copy of which mortgage is filed herewith and

made part of this petition, marked "Exhibit B," with the intent then and thereby to give preference to said J. H. Telford & Co., of LaFayette, Indiana, with the fraudulent intent, by such disposition of his property, to defeat and delay the operations of the bankrupt act. Also, that the said Harvey Sandusky, within the period aforesaid, to wit, at Vermillion County, in said district, on the tenth day of August, A. D. 1871, being possessed of certain real estate, to wit, in the county of Vermillion, in the said State of Illinois, that is to say, the south half of east half of southwest quarter of section thirty-four, township nineteen, range twelve west, except 19 a, heretofore deeded to Asa Elliott, (see deed, record N, page 503;) also part of southeast quarter of section fifteen, township nineteen, range twelve, beginning at southwest corner of said southeast quarter; thence north to the Big Vermillion; thence down said stream to east boundary of the west half of the southeast quarter of said section; thence south with said east boundary to the Big Vermillion River; thence down said stream with east boundary of said quarter-section; thence south to the southeast quarter of said quarter-section; thence west with south boundary of said quarter-
7 section to the beginning, 47 a, more or less, also the undivided ¼ part of the southeast quarter of the southeast quarter of section twenty-seven, township nineteen, range twelve; and the southeast quarter of the southeast quarter, and the west half of the southeast quarter of section twenty-seven, township nineteen, range twelve; the east half of the southwest quarter, the southwest quarter of the southwest quarter, the east half of the southeast quarter of section thirty-five, township nineteen, range twelve; the west half of the northeast quarter, the east half of lot 2 of the northwest quarter, east half of lot 1 of northwest quarter, and east half of the southwest quarter of section three, township eighteen, range twelve, did make a mortgage of the same to Wilson L. Hanna, of Lafayette, Indiana, a copy of which mortgage is filed herewith and made a part hereof, marked "Exhibit C," with the intent then and thereby to give preference to said Wilson L. Hanna, of Lafayette, Indiana, and with the fraudulent intent, by such disposition of his property, to defeat and delay the operation of the bankrupt act.

Wherefore, your petitioner prays that he, the said Harvey Sandusky, may be declared a bankrupt, and that a warrant may be issued to take possession of his estate; that the same may be distributed according to law, and that such further proceedings may be had thereon as the law in such case prescribes; and, inasmuch as the said petitioner
8 has reason to believe, and does believe, that the said bankrupt will, pending this proceeding, remove and conceal his goods and chattels, and make fraudulent conveyances of his property for the purpose of evading the operation of the said act of Congress, the petitioner prays that the same may be seized and held by the marshal, pending said proceeding; and further, your petitioner prays the court for an order enjoining and restraining the said Harvey Sandusky from in anywise disposing of any of his property, or removing the same, or incumbering the same during the pendency of this petition.

THE FIRST NATIONAL BANK OF INDIANAPOLIS,
Petitioner.
By GEO. W. PARKER, *Agent.*

HANNA & KNEFLER,
Attorneys for Petitioner.

Oath to foregoing petition.

UNITED STATES OF AMERICA,
District of Southern Illinois, ss:

I, George W. Parker, the authorized agent of the petitioner above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by me, are true so far as the same are stated of my own knowledge; and that those matters which are stated therein on information and belief are true, according to the best of my knowledge, information, and belief.

9 GEO. W. PARKER,
Agent of the First National Bank of Indianapolis, Petitioner.

Subscribed and sworn to before me this 25th day of August, A. D. 1871.

M. B. CONVERSE,
U. S. Commissioner Southern Dist. of Ills.

(Endorsed:) Filed August 25, 1871, at 8.30 o'clock p. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, against whom a petition for adjudication in bankruptcy was filed on the 25th day of August, A. D. 1871. } In bankruptcy.

At Springfield, in said district, on the 25th day of August, A. D. 1871, before M. B. Converse, one of the U. S. commissioners of said court.

DISTRICT OF SOUTHERN ILLINOIS, *ss:*

George W. Parker, agent of the petitioner, The First National Bank of Indianapolis, in the county of Marion and State of Indiana, being duly sworn and examined at the time and place above mentioned,
10 upon his oath says that the said Harvey Sandusky was, on and before the 25th day of August, A. D. 1871, and still is, justly and truly indebted to the petitioner, The First National Bank of Indianapolis, upon a promissory note in the words and figures following, to wit:

"$12,000.] INDIANAPOLIS, *June* 30, 1870

"Ninety days after date we promise to pay to the order of George W. Parker twelve thousand dollars, and five per cent. thereon for attorney's fees if suit be instituted on the note, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and of non-payment of this note, negotiable and payable at The First National Bank of Indianapolis, with ten per cent. interest after maturity until paid.

[$6.00 revenue-stamp.]

"GEO. H. TENERY.
"HARVEY SANDUSKY.
"AQUILA PARKER."

(Endorsed:) "GEO. W. PARKER."

Which promissory note aforesaid was assigned and endorsed by said George W. Parker by the description of "Geo. W. Parker" to the petitioner.

GEO. W. PARKER,
Agent for The First National Bank of Indianapolis, petitioning Creditor.

On the 25th day of August, A. D. 1871, before me personally
11 appeared George W. Parker, agent of The First National Bank of Indianapolis, the above-named petitioning creditor, and was duly sworn to the truth of the foregoing statement.

M. B. CONVERSE,
U. S. Commissioner.

(Endorsed:) Filed August 25, 1871, at 8 o'clock p. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, against whom a petition for adjudication of bankruptcy was filed on the 25th day of August, A. D. 1871. } In bankruptcy.

At Springfield, in said district, on the 25th day of August, A. D. 1871, before M. B. Converse, one of the U. S. commissioners of said court, in bankruptcy.

DISTRICT OF SOUTHERN ILLINOIS, *ss:*

George W. Parker, agent of the petitioner, the First National Bank of Indianapolis, in the county of Marion and State of Indiana, being duly sworn and examined, upon his oath, says that the said Harvey Sandusky, within the period aforesaid, to wit, at Vermillion County, in said district, on the ninth day of August, A. D. 1871, being pos-
12 sessed of certain real estate, to wit, the east half of the northeast quarter and the southeast quarter of section three, (3,) in township eighteen (18) north, range twelve (12) west, in Vermillion County, Illinois, did make a mortgage of the same to John L. Teucher and Joseph G. English, of Danville, in Vermillion County, Illinois, in the district aforesaid, a copy of which mortgage, marked "Exhibit A," is filed herewith and made a part hereof, with the intent then and thereby to give preference to said John L. Teucher and Joseph G. English, of Danville, in the county of Vermillion, State of Illinois, and district aforesaid, with the fraudulent intent, by such disposition of his property, to defeat and delay the operation of the bankruptcy act. Also, that the said Harvey Sandusky, within the period aforesaid, to wit, at Vermillion County, in said district, on the tenth day of August, A. D. 1871, being possessed of certain real estate, to wit, in the county of Vermillion, in the State of Illinois, that is to say, the south half of the east half of the southwest quarter of section thirty-four, township nineteen, range twelve (12) west, except 49 a, heretofore deeded to Asa Elliott, (see deed, record N, page 503:) Also, part of southeast quarter of section fifteen, township nineteen, range twelve, beginning at the southwest corner of said southeast quarter; thence north to the Big Vermillion River; thence down said stream to the east boundary of the west half
13 of the southeast quarter of said section; thence south with said east boundary to the Big Vermillion River; thence down said

stream with east boundary of said quarter-section; thence south to the southeast quarter of said quarter-section; thence west with the south boundary of said quarter-section, to the beginning, 47 a, more or less: Also, the undivided ¼ part of the northeast quarter of the southeast quarter of section 27, township 19, range 12; and the southeast quarter of the southeast quarter and the west half of the southeast quarter of section 27, township 19, range 12; the east half of the southwest quarter, the southeast quarter of the southwest quarter, the east half of the southeast quarter of section thirty-five, township nineteen, range twelve; the west half of the northeast quarter, the east half of lot 2 of the northwest quarter, east half of lot 1 of northwest quarter, and east half of the southwest quarter of section three, (3,) township eighteen, range twelve, did make a mortgage of the same to J. H. Telford & Co., of Lafayette, Indiana, a copy of which mortgage is filed herewith and made a part hereof, marked "Exhibit B," with the intent then and thereby to give preference to said J. H. Telford & Co., of Lafayette, Indiana, with the fraudulent intent by such disposition of his property to defeat and delay the operation of the bankrupt act. Also, that the said Harvey Sandusky, within the period aforesaid, to wit, at Vermillion County, in
14 said district, on the tenth day of August, A. D. 1871, being possessed of certain real estate, to wit, in *in* the county of Vermillion, in the said State of Illinois, that is to say, the south half of east half of southwest quarter of section thirty-four, township nineteen, range twelve west, except 19a, heretofore deeded to Asa Elliott, (see deed, record N, page 503:) Also, part of southeast quarter of section fifteen, township nineteen, range twelve, beginning at southwest corner of said southeast quarter; thence north to the Big Vermillion River; thence down said stream to east boundary of the west half of the southeast quarter of said section; thence south with said east boundary to the Big Vermillion River; thence down said stream with east boundary of said quarter-section; thence south to the southeast quarter of said quarter-section; thence west with south boundary of said quarter-section to the beginning, 47a, more or less: Also the undivided ¼ part of the northeast quarter of the southeast quarter of section twenty-seven, township nineteen, range twelve; and the southeast quarter of the southeast quarter and the west half of the southeast quarter of section twenty-seven, township nineteen, range twelve; the east half of the southwest quarter; the southwest quarter of the southwest quarter; the east half of the southeast quarter of section thirty-five, township nineteen, range twelve; the west half of the northeast
15 quarter, the east half of lot 2 of the northwest quarter, east half of lot 1 of northwest quarter, and east half of the southwest quarter of section three, (3,) township eighteen, range twelve, did make a mortgage of the same to Wilson L. Hanna, of Lafayette, Indiana, a copy of which mortgage is filed herewith, and made a part hereof, marked Exhibit "C," with the intent then and thereby to give preference to said Wilson L. Hanna, of Lafayette, Indiana, and with the fraudulent intent by such disposition of his property to defeat and delay the operation of the bankrupt act.

GEO. W. PARKER,
Agent for the First National Bank of Indianapolis, Indiana, petitioning creditor.

Subscribed and sworn to before me this 25th day of August, A. D. 1871.

M. B. CONVERSE,
U. S. Commissioner.

(Endorsed:) Filed August 25, 1871, at 8.30 o'clock p. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, AGAINST whom a petition for adjudication of bankruptcy was filed on the 25th day of August, A. D. 1871. } In bankruptcy.

16 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Upon filing proof sustaining the allegations of the petition aforesaid, it is ordered that the said Harvey Sandusky do appear at this court, as a court of bankruptcy, to be holden at Springfield, in the county of Sangamon, and State of Illinois, and district aforesaid, on the 5th day of September, A. D. 1871, at ten o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted; and it is further ordered, that a copy of said petition, together with a copy of this order, be served on said Harvey Sandusky, by delivering the same to him personally, or by leaving the same at his last usual place of abode in said district, at least five days previous to the day herein required for his appearance.

Witness the Hon. Samuel H. Treat, judge of the said court, and the seal thereof at Springfield, in said district, on the twenty-fifth day of August, A. D. 1871.

[L. S.] GEORGE P. BOWEN, *Clerk.*

Executed this writ on the 18th day of Aug., 1871, by leaving a true copy of the same, together with a certified copy of the within-mentioned petition in the hands of Mrs. Elizabeth Sandusky, at the last usual place of abode in this district of the within-named Harvey Sandusky.

JOHN L. ROUTT,
U. S. Marshal. So. Dist. Ills.

17 (Endorsed:) Filed Sept. 2d, 1871. Geo. P. Bowen, clk.

In the district court of the United States for the southern district of Illinois.

FRIDAY, *August* 25, *A. D.* 1871.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, against whom a petition for adjudication of bankruptcy was filed August 25, A. D. 1871, bankrupt. } In bankruptcy.

On reading and filing the petition of the First National Bank of Indianapolis, of the city of Indianapolis, county of Marion and State of Indiana:

It is ordered by the court that an injunction issue against said Harvey Sandusky, enjoining and restraining him from in anywise disposing of, removing, or incumbering any of his property until the further order of the court.

It is further ordered that the marshal make a complete inventory of all the personal property in possession of the said Harvey Sandusky.

Inventory.

In the U. S. district court, southern district of Illinois.

18 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } No. 1288.

Inventory of personal property in possession of Harvey Sandusky, the above-named bankrupt, to wit:

Five cows, four calves, seven head yearling cattle, twenty head of stock-hogs, twenty-five head of sheep, nine work-horses, two colts, six work-mules, two two-horse wagons, one spring-wagon, four two-horse breaking-plows, three shovel-plows, one harrow, one half-interest in a mowing-machine, about thirty bushels of wheat, one half-interest in about one hundred and fifty acres of growing corn, about ten tons of hay, and one half-interest in one hay-rake.

August 28, A. D. 1871.

JOHN L. ROUTT,
U. S. Marshal, So. Dist. Ill.

District court of the United States of America, southern district of Illinois, ss:

The United States of America to Harvey Sandusky, and to your counselors, attorneys, solicitors, trustees, and agents, and to each and every of you, greeting:

Whereas it hath been represented to the judge of our district
19 court of the United States for the southern district of Illinois, in bankruptcy sitting, on the part of the First National Bank of Indianapolis, of the city of Indianapolis, county of Marion and State of Indiana, petitioner in a certain petition for adjudication in bankruptcy, exhibited in our court, before the judge of said court, against you, the said Harvey Sandusky, to be relieved touching the matters complained of, in which said petition it is stated, among other things, that you did commit an act of bankruptcy, &c., within the meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, in that you did, on the ninth day of August, A. D. 1871, a' Vermillion County, in said district, being possessed of certain real estate, to wit, the east half of the northeast quarter and the southeast quarter of section three, in township eighteen north, range twelve west, in Vermillion County, Ill's, make a mortgage of the same to John L. Tincher and Joseph G. English, of Danville, Vermillion County, Illinois, with the intent then and thereby to give preference to said John L. Tincher and Joseph G. English, and with the fraudulent intent, by such disposition of your property, to defeat and delay the operation of the bankrupt act; and, it being ordered that a writ of injunction issue out of said court, upon said petition, enjoining and restraining you, and each of
20 you, as prayed for in said petition: We, therefore, in consideration thereof, and of the particular matters in said petition set forth, do strictly command you, the said Harvey Sandusky, your counselors, attorneys, solicitors, trustees, and agents, and each and every of you, that you do absolutely desist and refrain from in any wise disposing of,

removing, or incumbering any of the property of you, the said Harvey Sandusky, until this honorable court, in bankruptcy sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs. To the marshal of the southern district of Illinois, to execute, and return in due form of law. And the marshal is hereby commanded to make a complete inventory of all the personal property in possession of the said Harvey Sandusky, and make return of the same.

Witness the Hon. Samuel H. Treat, judge of our said district court, at Springfield, in said district, this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year.

[SEAL.] GEO. P. BOWEN, *Clerk.*

Executed this writ on the 28th day of Aug., 1871, by leaving a true copy of the same in the hands of Mrs. Elizabeth Sandusky, at the
21 last usual place of abode of the within-named Harvey Sandusky, in this district, and by making a complete inventory of all of the personal property in the possession of said Harvey Sandusky, said inventory being hereto attached and made a part of this return.

JOHN L. ROUTT,
U. S. Marshal So. Dist. Ills.

(Indorsed:) No. 1288. District court United States, southern district of Illinois. In bankruptcy. In the matter of Harvey Sandusky. Injunction. Filed September 2nd, A. D. 1871. Geo. P. Bowen, clerk. Hanna & Knefeler, attorneys, residence Indianapolis, Ind.

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF THE PETITION OF THE 1ST National Bank of Indianapolis, Indiana, creditor, *vs.* HENRY SANDUSKY, DEBTOR.	In bankruptcy.

22 At Springfield, in said district, on the 5th day of September, A. D. 1871.

And now on this return for the hearing of the said petition, the said Henry Sandusky appears and denies that he has committed the act of bankruptcy set forth in the said petition, and avers that he should not be declared bankrupt for any cause in said petition alleged; and he demands that the same may be enquired of by a jury.

HENRY SANDUSKY,
By ROSETTE & BRO.,
His Attorneys.

(Indorsed:) Filed Sept. 5, 1871, at 1 o'clock p. m.
GEO. P. BOWEN, *Clerk.*

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF THE PETITION OF THE FIRST National Bank of Indianapolis, creditor, *vs.* HARVEY SANDUSKY, DEBTOR. } In bankruptcy.

At Springfield, in said district, on the 5th day of September, 1871.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

23 Upon the demand in writing filed by the respondent to said petition, that the fact of the commission of an act of bankruptcy may be inquired of by a jury, it is ordered that said issue be submitted to a jury at the next January term of this court.

Witness the honorable Samuel H. Treat, judge of the said court, and the seal thereof, at Springfield, in said district, on the 5th day of September, A. D. 1871.

[SEAL.]

GEO. P. BOWEN,
Clerk of District Court for said District.

In the district court of the United States for the southern district of Illinois.

TUESDAY, *Sept. 5th, A. D.* 1871.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF THE PETITION OF FIRST National Bank of Indianapolis *vs.* HARVEY SANDUSKY. } In bankruptcy.

Now comes the said Harvey Sandusky, against whom an injunction has been issued in this cause, by Messrs. Rosette & Brother, his attorneys, and enters his motion to have said injunction dissolved.

Order dissolving injunction as to personal property.

In the district court of the United States for the southern district of Illinois.

24 SATURDAY, *September 9th, A. D.* 1871.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF THE PETITION OF THE FIRST National Bank of Indianapolis *vs.* HARVEY SANDUSKY, DEBTOR. } In bankruptcy.

Now comes the First National Bank of Indianapolis, the petitioning creditor herein, by Messrs. Stuart, Edwards & Brown, its attorneys, and comes also the said Harvey Sandusky, by Messrs. Rosette & Bro., his attorney', and the court having heard the motion heretofore entered in this

cause to dissolve the injunction issued against the said Harvey Sandusky, and being sufficiently advised in the premises, it is ordered that said injunction be dissolved as to personal property, but in all other matters to remain in full force.

It is further ordered that the petitioning creditor have leave to amend its petition.

To the honorable Samuel H. Treat, judge of the district court of the United States for the southern district of Illinois:

The amended petition of the First National Bank of Indianapolis, of the city of Indianapolis, State of Indiana, in the matter of Harvey Sandusky.

25 Your petitioner would represent unto your honor that the said Sandusky, since the filing of the petition, has departed from the State of Illinois for the purpose of taking up his residence outside of said State, and your petitioner would further state that the said Sandusky, within the period of three months prior to the filing of the original petition in this case, to wit, on the day and year, A. D. 1871, being a trader, fraudulently stopped and has not resumed payment of his commercial paper within a period of fourteen days. Wherefore your petitioner prays, &c.

STUART, EDWARDS & BROWN,
For Petitioner.

(Indorsed:) Filed Jan'y 23, 1872, at 11 o'clock a. m. Geo. P. Bowen, clerk.

Form No. 58.—Adjudication of bankruptcy. Creditor's petition.

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

26 At Springfield, in said district, on the 30th day of January, A. D. 1872.

This cause came on to be heard at Springfield, in said court, upon the petition filed by the First National Bank of Indianapolis, of the city of Indianapolis, in the county of Marion and State of Indiana, petitioning creditor, for adjudication of bankruptcy against the said Harvey Sandusky, and thereupon came the said petitioning creditor, by Messrs. Stuart, Edwards & Brown, its attorneys; and the said Harvey Sandusky, by Messrs. Rosette & Bro., his attorneys, by leave of the court withdrew his denial, heretofore filed, of the acts of bankruptcy alleged against him in said petition, and thereupon and upon consideration of the proofs in said cause it was found by the court that the facts set forth in said petition were true; and it is therefore adjudged that said Harvey Sandusky became a bankrupt within the true intent and meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, before the filing of the said petition, and he is therefore declared and adjudged a bankrupt accordingly.

And it is further ordered, that said bankrupt shall, within five days after the date of this order, make and deliver (or transmit by mail,
27 post-paid) to the marshal, as messenger, a schedule of his creditors and inventory of his estate, in the form and verified in the manner required of the petitioning debtor by the said act.

It is further ordered, that this cause be referred to James C. Lake, esq., one of the registers in bankruptcy of this court, to take such proceedings therein as are required by said act, and that until otherwise ordered by the court the said register shall act upon the matters arising in this case, at his office at Decatur, at such times as he shall fix for that purpose.

It is further ordered, that said bankrupt attend before said register at such times as he may direct, and submit to such orders as may be made by said register or by this court relating to his said bankruptcy.

Witness the Hon. Samuel H. Treat, judge of the said court, and the seal thereof, at Springfield, in said district, on the 30th day of January, A. D. 1872.

[SEAL.] GEO. P. BOWEN, *Clerk.*

28 *Form No. 15.—Choice of assignee.*

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

At Decatur, in said district, on the 19th day of March, A. D. 1872, before me, a register in bankruptcy.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

MEMORANDUM.—This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given by publication in the Danville Commercial, we, whose names are hereunto written, being the greater part in number and in value of the creditors of the said Harvey Sandusky, bankrupt aforesaid, present at this meeting, and who have proved our debts, have chosen, and do hereby nominate and choose, Joseph G. English to be the assignee of said bankrupt's estate and effects, and we do desire that may be appointed such assignee accordingly.

Name of creditors.	Residence of the same.	A'mt of debt.
James H. Telford	La Fayette, Ind	22 43
Richard Jones	Catlin, Ill's	39 90
J. C. Sandusky	do "	42 65
T. F. Runyon	" "	40 90
Isaac Woth	" "	1,107 34
Henry A. Foster	" "	224 66
John Burggone	" "	625 00

I do hereby accept the said trust.

JOSEPH G. ENGLISH.

I, James C. Lake, a register of said court in bankruptcy, do hereby approve of and confirm the said choice of assignee.

JAMES C. LAKE,
Register in Bankruptcy.

(Indorsed:) No. 1288. District court United States southern district of Illinois. In bankruptcy in the matter of Harvey Sandusky, a bankrupt. Choice of assignee. Filed March 26th, A. D. 1872, at 9 o'clock a. m. Geo. P. Bowen, clerk. Hanna & Knefler, attorneys; residence, Indianapolis, Ind.

29 In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

To Joseph G. English, of Danville, in the county of Vermillion and State of Illinois:

I do hereby certify to you that you are duly chosen assignee of the estate and effects of the above-named bankrupt at the first meeting of creditors, on the 19th day of March, A. D. 1872, and I do hereby approve and confirm said choice.

Dated at Decatur this 19th day of March, A. D. 1872.

JAMES C. LAKE,
Register in Bankruptcy.

To whom it may concern:

Be it known that I hereby signify my acceptance of the trust
30 of assignee of the estate of the above-named bankrupt, this 20th day of March, A. D. 1872.

JOSEPH G. ENGLISH.

(Endorsed:) Filed March 26th, 1872. Geo. P. Bowen, clerk.

31 *Form No. 17.—Bond of assignee.*

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that we, Joseph G. English, Samuel Frazier, and Levin T. Palmer, of Danville, in the county of Vermillion, and State of Illinois, are held and firmly bound unto the United States of America in the just and full sum of one hundred thousand dollars, to the payment whereof well and truly to be made we do bind ourselves, our and each of our heirs, executors, and administrators. Signed, sealed, and delivered at Danville, this 20th day of March, A. D. 1872.

The said Joseph G. English having been, on the 19th day of March, A. D. 1872, by order of the district court of the United States for the southern district of Illinois, in bankruptcy, appointed assignee of the estate of Harvey Sandusky, bankrupt, this bond is executed pursuant to the thirteenth section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States,"

approved March 2, 1867, and is conditioned for the due and faithful discharge of all his duties by the said Joseph G. English as such assignee and in compliance with the orders and directions of the court in the matter of bankruptcy of the said Harvey Sandusky.

JOSEPH G. ENGLISH. [L. S.]
SAMUEL FRAZIER. [L. S.]
LEVIN T. PALMER. [L. S.]

Signed, sealed, and delivered in the presence of—
E. S. TERRY.

I hereby certify that the within-named Levin T. Palmer and Samuel Frazier, who have executed the within bond as sureties of the within-named Joseph G. English, are the owners of property, real and personal, exceeding in value the sum of one hundred thousand dollars, the penalty of the within bond, and they are in all respects amply sufficient for said sum of money.

20th March, 1872.

E. S. TORREY.

(Indorsed:) No. 1288. District court United States, southern district of Illinois. In bankruptcy. In the matter of Harvey Sandusky, bankrupt. Assignee's bond. Filed March 26th, A. D. 1872, at 9 o'clock a. m. Geo. P. Bowen, clerk. On this 23d day of March, A. D. 1872, approved: James C. Lake, register. Hanna & Knefler, attorneys; residence, Indianapolis, Ind.

32 *Form No.* 18.—*Assignment of bankrupt's effects.*

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents, that Joseph G. English, of Danville, in the county of Vermillion and State of Illinois, in said district, having been duly appointed assignee in said matter:

Now, therefore, I, James C. Lake, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the said Joseph G. English, assignee as aforesaid, all the estate, real and personal, of the said Harvey Sandusky, bankrupt as aforesaid, including all the property, of whatever kind, of which he was possessed, or in which he was interested or entitled to have on the 25th day of August, A. D. 1871, with all his deeds, books and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act; to have and to hold all the foregoing premises to the said Joseph G. English and his heirs forever; in trust, nevertheless, for the uses and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand

and caused the seal of the said court to be affixed this 23rd day of March, A. D. 1872.

[SEAL.] JAMES C. LAKE,
Register in Bankruptcy.

(Indorsed:) No. 1288. District court United States, southern district of Illinois. In bahkruptcy. In the matter of Harvey Sandusky, bankrupt. Assignment of bankrupt's effects. Filed March 26th, A. D. 1872, at 9 o'clock a. m. Geo. P. Bowen, clerk. Hanna & Knefler, attorneys, residence, Indianapolis, Ind.

33 *Register's memoranda of approval of bond and assignment of property.*

In the district court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

At Decatur, in said district, on the day of , A. D. 187 , before , register in bankruptcy.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

MEMORANDA.—On this 23rd day of March, A. D. 1872, came Joseph G. English, of Danville, in the county of Vermillion and State of Illinois, who was heretofore appointed assignee of the estate of said bankrupt, and filed with me his acceptance in writing of said trust, and also presented his bond as such assignee, in due form, in the penal sum of one hundred thousand dollars, with Samuel Frazier and Levin T. Palmer, of Danville, Vermillion County, State of Illinois, as security, which bond was accepted and approved by me. And thereupon a conveyance of the property and effects of said bankrupt was made by me to the said Joseph G. English, as assignee, in accordance with the provisions of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

JAMES C. LAKE,
Register in Bankruptcy.

(Indorsed:) No. 1288. District court United States, southern district of Illinois. In bankruptcy. In the matter of Harvey Sandusky, bankrupt. Register's memoranda of approval of bond and assignment of property. Filed March 26th, A. D. 1872, at 9 o'clock a. m. Geo. P. Bowen, clerk. Hanna Knefler, attorneys, residence, Indianapolis, Ind.

34 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, 1.

Statement of all real and personal estate and effects whatever, which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person, in trust, for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

INTEREST IN LANDS.

Particular description of real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.
			Acres.
Part of the S. E. ¼ sec. 15, T. 19 N., R. 12 W.			47
W. ½ S. E. ¼ " 27, " 19 " 12			80
E. ½ S. W. ¼ " 35, " 19 " 12	Leased by Sandusky.		80
S. W. S. W. ¼ " 35, " 19 " 12			40
E. ½ S. E. ¼ " 34, " 19 " 12			80
Lot 2, N. E. ¼ " 3, " 18 " 12	Leased by Sandusky.		87. 70
" 1, N. E. ¼ " 3, " 18 " 12			80
W. ½ S. E. ¼ " 3, " 18 " 12			80
E. ½ 2 N. W. " 3, " 18 " 12			44. 37
E. ½ 1 N. W. " 3, " 18 " 12			40
E. ½ S. E. ¼ " 3, " 18 " 12			80
E. ½ S. W. ¼ " 3, " 18 " 12			80
S. ½ E. ½ S. W. ¼ " 34, " 19 " 12			40

J. G. ENGLISH, *Assignee.*

35 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 2.

PERSONAL PROPERTY.

	Dollars.	Cts.
1 note dated Aug. 20th, 1868, given by John Faulds, payable to his own order, assigned in blank to Harvey Sandusky, due six months after date, secured by trust-deed of even date of note	$7,319	00

J. G. ENGLISH, *Assignee.*

36 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 2.

PERSONAL PROPERTY.

	Dollars.	Cts.
1 reaper, ½ interest		
1 sulky-rake, ⅔ interest		
1 wheat-drill, ½ interest		
1 corn-planter, ½ interest		
2 double shovels		
1 breaking-plow		
1 fanning-mill		
471 shares Chicago & Carbon Cole Co. stock No. 144, $100	7,065	00
1 " " " " " " " " 138, "	15	00
1 promissory note on John Faulds, April 24, 1871, (worthless)	$2,009	00
1 " " " " March 5, 1870, "	100	00
1 " " " " Nov. 16, 1869, "	12,100	00
1 " " " " Henry Carrigan, May 28th, 1856 "	47	50
1 " " " " Silvey Poulton, Jan. 1, 1860 "	59	76

J. G. ENGLISH, *Assignee.*

37 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 5.

A particular statement of the property claimed as excepted from the operations of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any portion of it is real estate, its location, description, and present use.

[The property claimed to be exempt under the laws of any State to be described separately from the rest, and reference given to the statute of said State creating the exception.]

General head.	Particular description.	Valuation. Dollars. Cents.
Necessary household & kitchen furniture.	Desk, tetetete & chairs in parlor, whatnot, looking-glass, center-table, 30 yds. carpet, wash-stand, hall-carpets, sewing-machine, not exempted by State laws below...	175 00
Other articles & necessaries.		
Wearing-apparel of bankrupt & his family.		
Equipments, if any, as a soldier.		
Other property exempted by the laws of United States.		

J. G. ENGLISH, *Assignee.*

38 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 5.

A particular statement of the property claimed as excepted from the operations of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any portion of it is real estate, its location, description, and present use.

[The property claimed to be exempt under the laws of any State to be described separately from the rest, and reference given to the statute of said State creating the exception.]

		Valuation. Dollars. Cents.
Property exempted by State laws.	3 beds & bedding, stove & furniture, cupboard-ware, table, 1 doz. chairs, carpets, dressing-case, table, rocking-chair, lamps, table-cloth, carpet in parlor, window-curtains, washstand, chairs, & plow	115 00
	Amt. of provisions on hand, but not sufficient for 3 months' supply...	100 00

J. G. ENGLISH, *Assignee.*

39 *Oath to Schedule B.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

On this 13th day of April, A. D. 1872, before me personally came Joseph G. English, the person mentioned in and who subscribed to the foregoing schedule marked "B," respectively, and who, being by me first

duly sworn, did declare the said schedule to be a statement of all estate, real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, which has come to his knowledge or possession.

JOHN P. NORVILLE,
U. S. Commissioner for Vermillion County, Illinois.

(Endorsed:) Filed April 24, 1872, at 10 o'clock a. m. Geo. P. Bowen, clerk.

Petition of assignee for authority to sell, &c.

In the district court of the United States for the southern district of Illinois.

40 IN THE MATTER OF *in* THE ESTATE OF Harvey Sandusky, bankrupt. } In bankruptcy.

To the Hon. Samuel H. Treat, judge of said court:

Joseph G. English, assignee of the estate of said bankrupt, respectfully represents the estate of the said bankrupt consists chiefly of divers parcels of land, about nine hundred acres, lying and being in the county of Vermillion, and State of Illinois, of the probable value of forty-five thousand dollars. That said land' are encumbered by a certain mortgage made by the said bankrupt to I. H. Telford & Co., on or about the 10th day of August, 1870, to secure the payment of a note of the said bankrupt for the sum of ten thousand dollars; and also by a certain other mortgage made by the said Sandusky about the same time to Tincher & English, and by them assigned to the First National Bank at Danville, Illinois, to secure the payment of his note for about the sum of $6,640, which said several notes are now due and payable. That proceedings are now pending in this honorable court to set aside the said mortgage of them, the said J. H. Telford & Co., on the ground that the same made by the said bankrupt with intent to hinder and delay the creditors of the said bankrupt, and that the said Telford & Co. had, at the time of receiving the same, notice of such intent. Said
41 assignee further represents that the said bankrupt is entitled to a homestead-exemption in a parcel of said lands; that said homestead or the dwelling-house, and curtilages, and appurtenances, occupied by the said bankrupt and his family, consisting of his wife and children, is of the value of at least the sum of eight thousand dollars; and that his said homestead, because of such value, cannot be assigned to him specifically or as a parcel of said lands. Your petitioner further show' that in the present dearth of demand for lands of the value of said lands, and the scarcity of money that at present prevails, owing to the depression of the prices of agricultural products, the said lands if sold for cash, peremptorily, would be sold at a great sacrifice and greatly below their real value, to the great detriment of the interests of the creditors of said estate; and that, according to the best judgment of your petitioner, it would be for the benefit of said creditors that the said lands be sold at public or private sale upon the terms following: One-third of the purchase-money cash in hand, and the residue thereof payable in two equal instalments, six and twelve months from the day of sale, with interest at the rate of ten per centum per annum; that a majority of the creditors in value of claims have consented that such sale

be made in said terms, and also that the said several mortgages, if deemed by the court to be valid, be paid out of the first proceeds
42 of said sale, as also the sum of one thousand dollars be paid to said bankrupt in satisfaction of his homestead-rights in said——

Therefore petitioner ask' that he be empowered to sell said lands agreeably to the foregoing suggestions and to pay out the proceeds of said sale that may be first realized, as aforesaid.

Dated this 18 Jan'y, 1873.

J. G. ENGLISH, *Assignee.*

(Indorsed:) Filed January 18, 1873, at 10 o'clock a. m. Geo. C. Bowen, clerk.

In the district court of the United States, for the southern district of Illinois.

SATURDAY, *January* 18, A. D. 1873.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF HARVEY Sandusky, bankrupt. } In bankruptcy.

On reading and filing the petition of Joseph G. English, assignee of the estate of said bankrupt, it appearing to the court from said petitioner, that said estate consists chiefly of about nine hundred acres of land in the county of Vermillion, State of Illinois, of the probable value of forty-five thousand dollars; that said lands are encumbered by a mort-
43 gage to I. H. Telford & Co., to secure the payment of a note of said bankrupt for the sum of ten thousand dollars, and also by a mortgage made to Tincher and English, and by them assigned to the First National Bank, at Danville, Ills., to secure the payment of a note of said bankrupt for about the sum of six thousand six hundred and forty dollars, which several notes are now due and payable.

It further appearing to the court from said petition that said bankrupt is entitled to a homestead exemption on a parcel of said lands; that said homestead, or the dwelling-house and appurtenances occupied by said bankrupt, is of the value of at least eight thousand dollars; and because of such value cannot be assigned to him specifically, or as a parcel of said lands:

It further appearing to the court that according to the best judgment of said assignee, it would be for the benefit of the creditors of said estate that said lands be sold at public or private sale for one-third of the purchase-money, cash in hand, and the residue payable in two equal installments six and twelve months from the day of sale, with interest at the rate of ten per cent. per annum, that a majority in value of the creditors of said bankrupt have consented that said sale be made on said terms,
44 and that said mortgages, if deemed by the court to be valid, be paid out of the proceeds of such sal ; and that the sum of one thousand dollars be paid the said bankrupt in satisfaction of his homestead: It is therefore ordered by the court that said assignee be authorized to sell said real estate at public or private sale, with or without advertisement, for cash, or upon the terms above stated. It is further ordered that said sale be made without prejudice to the rights of the holders of said mortgages, (if the same shall be deemed by the court to be valid and the amount due thereon shall be established by due proof,) to be paid out of the first proceeds of such sale, and also without

prejudice to the rights of said bankrupt, to be paid the said sum of one thousand dollars, in satisfaction of his homestead.

In the district court of the United States for southern dist. of Illinois.

To the honorable Samuel H. Treat, judge of the United States dist court for the southern dist. of Illinois:

The undersigned, Joseph G. English, assignee of the estate of
45 Harvey Sandusky, in bankruptcy, begs leave to report that, in compliance with an order of said court bearing date the 18 day of January, 1873, for the sale of the real estate belonging to said bankrupt, he did, after due notice, on the 20 day of March, 1873, sell at the door of the clerk's office, in the city of Danville, in the county of Vermillion and State of Illinois, all the real estate, and also 472 shares of the stock of the Chicago & Carbon Coal Company, belonging to the said bankrupt, and that the same was struck off at the prices, and to the parties following, they being the highest and best bidders therefor, to wit:

To WILLIAM SANDUSKY:

The E. ½ S. E. ¼	sec.	34,	T.	19	N.,	R.	12	W.,	80	acres, *a* $45.50 per acre	$3,640 00
" W. ½ S. W. ¼	"	35,	"	19	"	"	12		82 a.	36 " "	2,952 00
" E. ½ S W. ¼	"	35,	"	19	"	"	12		81.90	36 " "	2,948 40
											$9,540 40

To AQUILLA PARKER:

The E. ½ S. E. ¼	sec.	3,	T.	18	N.,	R.	12	W.,	81	acres, *a* $50.00 per acre	$4,050 00
" E. ½ S.W. ¼	"	3,	"	18	"		12		81.20	" 36 " "	2,923 20
" W. ½ S.E. ¼	"	3,	"	18	"		12,	"	81.20	" 36 " "	2,923 20
Part S. E. ¼		" 15,	"	19	"		12,	"	69.50	" 21.50 " "	1,494 25
Total											$11,390 65

46 To JACOB C. SANDUSKY:

The W. ½ S. E. ¼	sec.	27,	T.	19	N.,	R.	12	W.,	82	acres, *a* $26.00 per acre	$2,132 00
Lot 7,	block	11,	in	Harvey	Sandusky'	addition	to	Catlin,	Ill		29 00
" 1,	"	13,	"	"	"	"	"	"	"		15 50
" 1,	"	17,	"	"	"	"	"	"	"		10 00
Total											$2,186 50

To WILLIAM PARKER:

Lot 2, block 18, in Harvey Sandusky' addition to Catlin, Ills	$21 10

To VICTOR LESEURE:

The N. E. ¼	sec.	3,	T.	18	N.,	R.	12	west,	173.04	acres, at $64.50 per acre	$11,161 08
" E. ½ N. W.	"	3,	"	18,	"	12	"		86.40	" " 64.50 " "	5,605 05
S. ½, W. ½ S. E. ¼	"	34,	"	19,	"	12	"	31		" " 64.50 " "	1,999 50
South and E. ½ S.W. ¼	sec.	34,	T.	19	N.	R.	12	west,	20.33	acres, *a* $64.50 per acre	1,311 28
& 472 shares stock Chicago & Carbon Coal Co., at $5.00 per share											2,360 00
Total											22,436 91

RECAPITULATION.

Wm Sandusky	$9,540 40
Aquilla Parker	11,390 65
Jacob C. Sandusky	2,186 50
Wm. Parker	21 10
Victor Leseure	22,436 91
	$45,575 50

All of which is respectfully submitted.

JOSEPH G. ENGLISH, *Assignee.*

47 (Indorsed:) Filed March 22, 1873, at 2 o'clock p. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

SATURDAY, *April* 12, *A. D.* 1873.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

Joseph G. English, assignee of said bankrupts' estate, having on the 22d day of March, A. D. 1873, filed in this court his report of the sale of the following-described real estate belonging to said bankrupt's estate, situated in the county of Vermillion and State of Illinois, to wit, the east half of the southeast quarter of section thirty-four, (34,) township nineteen (19) north, range twelve (12) west, containing eighty (80) acres; the west half of the southwest quarter of section thirty-five, (35,) township nineteen (19) north, range twelve (12) west, containing eighty-two (82) acres; the east half of the southwest quarter of section thirty-five, (35,) township nineteen (19) north, range twelve (12) west, containing eighty-one and $\frac{90}{100}$ ($81\frac{20}{100}$) acres;

The east half of the southeast quarter of section three, (3,) town-
48 ship eighteen (18) north, range twelve (12) west, containing eighty-one acres; the east half of the southwest quarter of section three, (3,) township eighteen (18) north, range twelve (12) west, containing eighty-one and $\frac{20}{100}$ ($81\frac{20}{100}$) acres; the west half of the southeast quarter of section three, (3,) township eighteen (18) north, range twelve (12) west, containing eighty-one and $\frac{20}{100}$ ($81\frac{20}{100}$) acres; part of the southeast quarter of section fifteen, (15,) township nineteen (19) north, range twelve (12) west, containing sixty-nine and $\frac{50}{100}$ ($69\frac{50}{100}$) acres; the west half of the southeast quarter of section twenty-seven, (27,) township nineteen (19) north, range twelve (12) west, containing eighty-two (82) acres; lot seven (7,) block eleven (11,) lot one (1,) block thirteen (13,) lot one (1,) block seventeen (17,) and lot two (2,) block eighteen (18,) all in Harvey Sandusky's addition to Catlin, Illinois; the northeast quarter of section three, (3,) township eighteen (18) north, range twelve (12) west, containing one hundred seventy-three and $\frac{04}{100}$ ($173\frac{04}{100}$) acres; the east half of the northwest of section three, (3,) township eighteen (18) north, range twelve (12) west, containing eighty-six and $\frac{40}{100}$ ($86\frac{40}{100}$) acres; the south half of the west half of the southeast quarter of section thirty-four, (34,) township nineteen (19) north, range twelve (12) west, containing thirty-one (31) acres; and the south end of of the east half of the southwest quarter of section thirty-four, (34,) township nineteen (19) north, range twelve (12) west, containing twenty and $\frac{33}{100}$ ($20\frac{33}{100}$) acres; and no exception having been filed thereto,
49 it is ordered by the court that said report be in all things approved and confirmed.

50 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule A, No. 1.

Statement of all creditors who are to be paid in full, or to whom priority is secured, according to the provisions of the 28th section of said act.

Order of payment — preferred claims.	Reference to ledger of voucher.	Names of creditors.	Residences and occupations.	Amount. Dollars. Cents.	Where and when contracted.	Nature and consolidation of the debt, and whether contracted as copartner or joint contractor; and, if so, with whom.
None.....	None.....	.....	.....	None.....		

HARVEY SANDUSKY, *Petitioner.*

51 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule A, No. 2.

Creditors holding securities.

Particulars of securities held, with dates of same, and when given, to be stated under the names of the several creditors; and also particulars concerning each debt, as required by the eleventh section of the act and whether contracted as co-partner or joint contractor with any other person; and, if so, with whom

Ledger or voucher.	Names of creditors.	Residences & description.	When & where contracted.	Value of securities.	Amount of debt.
	1st National Bank ...	Danville, Illinois	Aug. 9th 1872.....	.....	6,750 00
	J. H. Telford & Co...	La Fayette, Ind.....	" 10, 1871.....	.....	10,000 00
	Wilson & Hanna	" "	" 10, "	.....	9,000 00

HARVEY SANDUSKY, *Petitioner.*

52 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule A, No. 3.

Creditors whose claims are unsecured.

[When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note etc., are unknown, the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, and whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued.]

Ledger or voucher.	Names of creditors.	Residences & occupations.	Amount.	When & where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor with any other person; and if so, with whom?
			Dollars. Cents.		
	John G. Holden	Danville, Ills.....	23 12	Danville, Ills..	Lumber, &c.
	Jas. H. Woodbury...	" "	126 00	" " ..	Note.
	Daniel Force	" "	41 25	" " ..	a/c blacksmithing.
	Wm. W. Woodbury..	" "	170 16	" " ..	" paints, &c.
	Dent & Black	Chicago, "	535 50	" " ..	Judgment.
	M. D. Hawes	Tuscola, "	134 17	" " ..	Note.
	Martin Brachall	Danville, "	51 85	" " ..	a/c clothing.
	Wm. Hessey.....	" "	170 16	" " ..	Note as security.
	Isaac Sandusky	Paris, Ky	1,100 00	Paris, Ky.....	Money borrowed.
	James Smith	Vermilion Co., Ills	1,100 00	Ver. Co., Ills ..	" "
	John P. & Jas. Cook	" " " .	1,000 00	" " " ..	" "
	James Duncan & Wm. M. Payne ...	Danville, " .	700 00	Danville, " ..	Security.

HARVEY SANDUSKY, *Petitioner.*

53 IN THE MATTER OF bankrupt. } Schedule A, No. 4.

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, or acceptors.

[The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the petitioner should be stated, and his business and place of residence. The same particulars as to notes or bills on which the petitioner is liable as endorser,]

Reference to ledger or voucher.	Names of holders as far as known.	Place of residence and occupation.	Place where contracted.	Amount.	Nature of liability; whether same was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
	None.....	None.....	.....	*Dollars. Cents.* None.....	

HARVEY SANDUSKY, *Petitioner.*

54 IN THE MATTER OF bankrupt. } Schedule A, No. 5.

Accommodation paper.

[The dates of the notes or bills, and when due, with the names, residences, and business or occupation of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders. If the bankrupt be liable as drawer, maker, acceptor, or endorser thereof, it is to be stated accordingly. If the names of holders are not known, the name of the last holder known to the petitioner should be stated, with his business and place of residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences of holders and particulars of notes or bills.	Place where contracted.	Amount.	Whether liability was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
	None....	None.....	.....	*Dollars. Cents.* None	

HARVEY SANDUSKY, *Petitioner.*

55 *Oath to Schedule A.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

On this 3d day of March, A. D. 1873, before me personally came Harvey Sandusky, the person mentioned in, and who subscribed to the foregoing petition and schedule marked A, respectively, and who being by me first duly sworn, did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

JOHN P. NORVELL,
U. S. Commissioner.

56 IN THE MATTER OF bankrupt. } Schedule B, 1.

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person, in trust, for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

INTEREST IN LANDS.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.					Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.
	Section.	*Town.*		*Acres.*			
E. ½ S. W. ¼	35,	19 N., R.	12 west,	80	Mortgaged to Tincher & English, J. H Tilford & Co., & Wilson & Hanna, on the 9th & 10th of August, 1871. Total of said mortgages amount to $25,750.		40.00 per acre.
S. W. S. W.	"	"	12 "	40			
E. ½ S. E.	34,	"	12 "	80			
E. ½ 2 N. W.	3,	18	12 "	44			
E. ½ 1 N. W.	3,	18	12 "	40			
Lot 2 N. E.	"	"	12 "	87.33			
Lot 1 N. E.	"	"	" "	80			
W. ½ S. E. ¼	"	"	" "	80			
W. ½ S. E.	27,	19	12 "	80			
E. ½ S. W.	3,	18	12 "	80			
E. ½ S. E.	"	"	" "	80			
Pt. S. ½ E. ½ S. W.,	34,	19	12 "	18			
" S. ½ W. ½ S. E.	"	"	" "	28			
S. W. S. W.	35,	"	" "	40			
In sec.	15,	"	" "	47			

HARVEY SANDUSKY, *Petitioner.*

57 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 2.

PERSONAL PROPERTY.

	Dollars.	Cts.
1. One reaper, ½ interest therein	36	00
1. One sulky rake, ⅓ " "	14	66
1. One wheat-drill, ½ " "	19	75
1. One corn-planter, ½ " "	1	00
2. Two shovel-plows, double	2	00
1. One breaking-plow		50
1. One fanning-mill		25
473 shares stock Chicago & Carbon Coal Co., estimate	7,095	00
1. One note on John Faulds	2,009	00
1. " " " " "	100	00
1. " " " " "	12,000	00
1. " " " Henry Carrigan	47	50
1. " " " Selvey Proctor	59	7
1. " " " John Faulds, secured by trust-deed	7,009	00

HARVEY SANDUSKY, *Petitioner.*

58 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 4.

The property in reversion, remainder, or expectancy, including property held in trust for the petitioner, or subject to any power or right to dispose of, or to charge.

[A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the petitioner.]

General interest.	Particular description.	Supposed value of my interest. Dollars. Cts.
None.		

HARVEY SANDUSKY, *Petitioner.*

59 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 5.

A particular statement of the property claimed as excepted from the operations of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any portion of it is real estate its location, description, and present use.

[The property claimed to be exempt under the laws of any State to be described separately from the rest, and reference given to the statute of said State creating the exception.]

	Valuation. Dollars. Cents.
One desk	
One tetete	
One set chairs in parlor	
One "what-not"	
One looking-glass	
One center-table	
Thirty yards carpet	
One wash-stand	
One hall-carpet	
One sewing-machine	175 00
Three beds & bedding	
One stove & furniture	
One cupboard & ware	
Two tables	
One doz. chairs	
Carpets down	
One dressing-case	
One rocking-chair	
Lamps	
Table-cloths	
One carpet in parlor	
Window-curtains	
One washstand	

HARVEY SANDUSKY, *Petitioner.*

60 IN THE MATTER OF , bankrupt. } Schedule B, No. 5.

A particular statement of the property claimed as excepted from the operations of said act by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any portion of it is real estate, its location, description, and present use.

[The property claimed to be exempt under the laws of any State to be described separately from the rest, and reference given to the statute of said State creating the exception.]

	Valuation. Dollars. Cents.
One plow ..... } Chairs ..... }	115 00
Provision on hand not sufficient for 3 months.	100 00
Cash	300 00
Am't claimed as homestead exemption, in cash	1,000 00

HARVEY SANDUSKY,
Petitioner.

61 IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } Schedule B, No. 6.

The following is a true list of all books, papers, deeds, and writing relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and, also, of all others which have been heretofore at any time in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same:

The patents and deeds relative to the lands included in this schedule.

HARVEY SANDUSKY,
Petitioner.

62 *Oath to Schedule B.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

On this 3d day of March, A. D. 1873, before me personally came Harvey Sandusky, the person mentioned in, and who subscribed to, the foregoing petition and schedule marked B, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

JOHN P. NORVILLE,
U. S. Commissioner.

(Endorsed:) Filed May 22, A. D. 1873, at 8 o'clock a. m. Geo. P. Bowen, clk.

63 STATE OF ILLINOIS,
Vermilion County:

Victor Leseure, of said county, being duly sworn, deposes and says that on he day of , 1873, at a sale of the lands of Harvey

Sandusky, a bankrupt, then made by Joseph G. English, the assignee of the estate of said Sandusky, he, this affiant, bid off at such sale for Ebin H. Palmer, cash'r of 1st National Bank, J. H. Telford, J. H. Gass, and J. L. Breckenridge, and as their agent, the following lands, being parcel of the lands of said bankrupt, viz, the northeast of section three in township eighteen N., R. 11 west; the W. ½ N. W. ¼ of same section; a tract commencing at S. W. corner of W. ½ of S. E. ¼ 34, township nineteen N., R. 11 W.; thence north to H. Sandusky's addition to Catlin; thence E. to line dividing the E. ½ and W. ½ of said southeast quarter; thence S. to S. E. corner of W. ½ of S. E. qr. of said section; thence west to the beginning, 31 acres; and part of S. ½ of the E. ½ S. W. qr. of the same section; 18 acres; in all 311 acres, at the $64.50 per acre. That he purchased the said lands for the parties above named, they being, as affiant was informed and believed, creditors of the estate of said bankrupt, as their agent, with the knowledge and consent of the said English as such assignee, and in accordance with arrangement or
64 agreement before then made, as affiant is advised and believes, for such purpose by the said parties and the said English; that shortly after such sale the said Breckenridge departed this life insolvent, and as affiant is advised and believes leaving no estate sufficient to pay his debts, and that the said other parties have wholly failed to comply with the terms of said sale and the said assignment made by them as aforesaid.

And said affiant further says that in acting in the premises, he acted solely for and as the agent of the said Palmer, cashier as aforesaid, Telford, Gass, and Breckenridge, and that he so acted with the knowledge and assent of the said assignee, and that he in nowise has any intent, or intended to acquire any interest in the premises by his said purchase of said lands.

V. LESEURE.

Subscribed & sworn to before me this 15th day of June, A. D. 1873.

JOHN P. NORVILLE,
U. S. Commissioner.

STATE OF ILLINOIS,
Vermilion County:

Victor Leseure, being duly sworn, deposes and says that the description of the lands mentioned in the above and preceding affidavit
65 is erroneous in this, that the said lands *are* in said affidavit mentioned are incorrectly described to be in range eleven (11) when in truth and in fact they are in range twelve (12) and were intended to be described as being in said last-named range; and also in this, that the said parcel of land in the northwest quarter of said section three is erroneously described in said affidavit as the W. ½ N. W. ¼, when in truth and in fact the same is in the E. ½ of said southwest quarter of said section three, and was intended to be so described in said affidavit; and that the said lands are truly and correctly described in this report of the sale of the same heretofore made to him by the assignee of the estate of Harvey Sandusky.

V. LESEURE.

Subscribed and sworn to before me this 13th August, 1873.

JOHN P. NORVILLE,
U. S. Commissioner.

Petition of assignee for authority to resell.

District court of the United States for the southern district of Illinois.

IN THE MATTER OF HARVEY SANDUSKY, a bankrupt. } In bankruptcy.

66 To the Hon. Sam'l L. Treat, judge of said court:

The petition of Joseph G. English, assignee of the estate of the said bankrupt, shows that on the day of , 1873, he offered for sale the lands and real estate of the said bankrupt; that prior to such sale it was arranged and agreed by E. H. Palmer, cashier of the 1st National Bank of Danville, J. H. Telford, John H. Gass, and J. S. Breckenridge, the said bank, Telford Gass, and Breckenridge being creditors of said estate, with the consent of your petitioner, that Victor Leseure should, as their agent and for their use and benefit, purchase certain parcels of said lands; that the said Leseure did at such sale purchase, as their agent and for their use, the lands described in the affidavit of the said Leseure hereto annexed, and at the price and rate therein stated—which said affidavit your petitioner prays may be taken as part of his petition herein; that shortly after such sale and purchase the said J. S. Breckenridge died insolvent, and without leaving sufficient estate or property to pay his debts, and that the Palmer, Telford, and Gass refuse to execute and comply with the terms and conditions of said sale.

Wherefore your petitioner asks that the said sale, made to the
67 said Leseure as aforesaid, be by an order of this court vacated, and that he have leave to re-expose said lands to sale.

JOSEPH G. ENGLISH, *Assignee.*

(Endorsed:) Filed June 28th, 1873, at 8.45 o'clock a. m. Geo. P Bowen, clerk.

Filed as amended August 20th, 1873, at 8 o'clock a. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

WEDNESDAY, *Aug. 20th, A. D.* 1873.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, BANKRUPT. } In bankruptcy

On reading and filing the petition of Joseph G. English, assignee of said bankrupt's estate, and the affidavits of Victor Leseure thereto an-
68 nexed, it appearing to the court, from said petition and affidavits that at the sale of the real estate belonging to said bankrupt's estate, made by said assignee on the 20th day of March, A. D. 1873, in pursuance of an order of this court entered in this cause on the 18th day of January, A. D. 1873, the said Victor Leseure, as agent for E. H. Palmer, cashier of First National Bank of Danville, J. H. Telford, J. H. Gass and J. S. Breckenridge, creditors of said bankrupt, became the purchaser of the following-described real estate, to wit: The N. E. ¼ sec. 3, T. 18 N., R.

12 west, 173^{04} acres; the E. ½ N.W. sec. 3, T. 18 N., R. 12 west, 86^{40} acres; S. ½ W. ½ S. E. ¼ sec. 34, T. 19 N., R. 12 west, 31 acres; south end E. ½ S. W. ¼ sec. 34, T. 19 N., R. 12 west, 20^{33} acres. It further appearing to the court that the said J. S. Breckenridge has departed this life insolvent, and that the said E. H. Palmer, cashier of First National Bank of Danville, J. H. Telford, and J. H. Gass refused to execute and comply with the terms and conditions of said sale—

It is therefore ordered by the court that the sale of the real estate hereinabove described to the said Victor Leseure, as agent for the said E. H. Palmer, cashier of First National Bank of Danville, J. H. Telford, J. H. Gass, and J. S. Breckenridge, be, and the same is hereby, set aside and vacated.

It is further ordered that said assignee be authorized to sell said real estate in the manner and upon the terms and conditions specified in the order of the court, made and entered in this cause on Saturday, the 18th day of January, A. D. 1873.

69 To the Hon. Samuel H. Treat, judge of the dist. court of the United States for the southern dist. of Illinois:

The undersigned begs to report that he did, in compliance with an order of said court, dated the 20th day of August, A. D. 1873, sell at public sale, on the 18th day of October, 1873, after giving notice thereof by handbills, and publication for three consecutive weeks in a weekly newspaper published in the city of Danville, county of Vermilion, and State of Illinois, as required by an order of said court, dated the 18th day of January, A. D. 1873, on the premises, the following described real estate, to wit:

The N. E. ¼ of section 3, town. 18 N., R. 12 west, 176$\frac{04}{100}$ acres; the E. ½ N. W. ¼ of section 3, town. 18 N., R. 12 west, 86^{40} acres; thirty-one acres off the south end of the S. ½ W. ½ S. E. ¼, of section 34, town. 19 N., R. 12 west, and fifteen & thirty-three one hundredths acres off the south end of the east half of the S. W. ¼ of section, contain'g in all three hundred and five and seventy-seven one-hundredths acres; and Elizabeth Sandusky bid therefor the sum of fifteen thousand five hundred and ninety-four dollars and twenty-seven cents; that being the highest and best bid, the same was struck off and sold to her.

70 The undersigned would further report that he did, on said 18th day of October, 1873, sell at private sale, for the sum of one hundred dollars, to William Gurling, the following-described real estate, situated in Vermilion County, Illinois, to wit: Commencing at the northeast corner of the E. ½ W. ½ N. E. ¼ of section 34, town. 19 N., R. 12 west; thence south 60 rods, thence west 2 rods, thence north 60 rods, thence east two rods to the place of beginning; also, commencing at the N. W. corner of the N. E. ¼ N. E. ¼ of said section 34; thence east two rods, thence south 46 rods, thence west 2 rods, thence north 46 rods to the place of beginning. And also, at the same time, to Jacob C. Sandusky, at private sale, for the sum of one hundred and seventy-five dollars, lot No. five, in block No. three, in Josiah Sandusky' 1st addition to the town of Catlin, in the county aforesaid.

All of which is respectfully submitted.

JOSEPH G. ENGLISH,
Assignee of the Estate of Harvey Sandusky, Bankrupt.

(Endorsed:) Filed Oct. 27th, 1873, at 10 o'clock a. m. Geo. P. Bowen, clerk.

71 District court of the United States for the southern district of Illinois.

IN THE MATTER OF THE PETITION OF THE First National Bank of Indianapolis *vs.* HARVEY SANDUSKY. } In bankruptcy.

To the First National Bank of Indianapolis, and Messrs. Stuart, Edwards & Brown, its attorneys:

You are hereby notified that on the 10th day of December, 1873, at 10 o'clock a. m., before the Hon. Samuel H. Treat, judge of said court, at chambers, the said Harvey Sandusky will move the court for leave to file his petition in the above-entitled cause, for a review of the proceedings in said cause, and to vacate the decree of bankruptcy therein, and for other relief, which petition the said Harvey Sandusky has this day placed in the hands and in the office of the clerk of said court for your examination.

HARVEY SANDUSKY,
By HUFF & LANGDON, &
BRACKET & REILLY,
His Attorneys.

I hereby certify that I delivered a true copy of the within
72 notice to Messrs. Stuart, Edwards and Brown, this 9th day of December, A. D. 1873.

E. R. ROE, *U. S. Marshal*,
By N. B. AMES, *Deputy*.

(Indorsed:) Filed December 10, 1873. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

WEDNESDAY, *December 10th*, 1873.

Before the honorable Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, BANKRUPT. } In bankruptcy.

And now on this day came Harvey Sandusky, by his counsel, Huff & Langdon, and Bracket & Reiley, and the petitioning creditor, The First National Bank of Indianapolis, and Joseph G. English, the assignee, by Stuart, Edwards & Brown, their counsel, and on motion of Sandusky, leave is given him to file his petition herein, which is accordingly done; and on his further motion, it is ordered by the court that the said
73 First National Bank of Indianapolis and Joseph G. English file their answers to said petition on or before the first Monday of January next.

District court of the United States for the southern district of Illinois.
In bankruptcy.

To the Hon. Samuel H. Treat, judge of said court, in bankruptcy sitting:

Your petitioner, Harvey Sandusky, by leave of the court, shows unto your honor that on the 30th day of June, 1870, one George H. Tenny, as principal, and Aquilla Parker and your petitioner as sureties, at the

city of Indianapolis, in the State of Indiana, executed their promissory note, whereby they promised to pay to the order of one George W. Parker, ninety days after date thereof, the sum of twelve thousand dollars, and attorneys' fees if suit be instituted on said note, without relief from the valuation and appraisement laws of the State of Indiana, with ten per cent. interest after maturity, negotiable and payable at the First National Bank of Indianapolis, and waiving demand of payment, and protest and notice of protest, and of non-payment as to drawers
74 and endorsers; that the said George W. Parker, as an accommodation endorser for the said George H. Tenny, assigned said note to the said First National Bank of Indianapolis, and the proceeds thereof were paid over by said bank to the said George H. Tenny; that after the maturity of the said note, the same remaining unpaid, the said bank instituted an action upon it in the circuit court of the county of Marion, in the State of Indiana, against all the said makers and the endorser, in which action process of summons was issued against the said makers and endorser, which was duly served on the said maker Aquilla Parker, and the said endorser George W. Parker, but the said George H. Tenny, and your petitioner, being residents of the State of Illinois, and not at that time sojourning in the State of Indiana, were not served with said process of summons, but as to them it was returned by the sheriff "not found," and such proceedings were had in said action that on the 23d day of December, 1870, in the said Marion circuit court, the said First National Bank of Indianapolis, the plaintiff in said action, caused the said return of "not found" as to the said Tenny and your petitioner to be suggested of record in said court, and proceeded to final judgment on said note against the said Aquilla Parker and
75 George W. Parker, whereby the said bank recovered of and from the said Aquilla Parker and George W. Parker the sum of $12,904.80, being the whole amount of the said note, with attorney's fees and interest, the said Marion circuit court having competent jurisdiction and authority to render such judgment, a duly-certified copy of which said judgment and decree your petitioner hereby offers to and will produce on final hearing herein, as required by the rules of this honorable court and the acts of Congress relating thereto.

Your petitioner further states and charges the fact to be that, thereafter, to wit, on the 25th day of August, A. D. 1871, "The First National Bank of Indianapolis," a corporate body and organization existing and doing business at Indianapolis, in said State of Indiana, in virtue of the act of Congress of the United States of America, did, without just cause or legal authority, file in this court, and caused to be commenced, proceedings in bankruptcy against your petitioner, through and by one George W. Parker, the recognized agent of the said First National Bank of Indianapolis aforesaid, whom your petitioner prays may be made a party defendant herein. The said George W. Parker being the endorser on said note, and your petitioner, at the said time that the said petition was filed, being wholly ignorant of the fact that said
76 judgment of said court in said State of Indiana had been rendered.

Your petitioner further states the fact to be that, thereafter, to wit, on the 5th day of September, 1871, your petitioner appeared in this court in answer to said proceedings in bankruptcy, and fully denied said alleged acts of bankruptcy, and claimed the right of trial by jury therein and regarding the same, which right of trial by jury was awarded, under the law, to your petitioner, and still remains in full force the decree of this court, wholly unreversed or annulled, no act of your petitioner or consent

of any kind to his counsel or attorneys authorizing any waiver of such right of trial by jury ever having been had, granted, obtained, or acquiesced in, in any manner or form, particular, or respect whatever.

Your petitioner further most respectfully represents that *that* neither the original petition *on* the amendment of the same under said act of bankruptcy, or of any amendment thereto under the facts alleged or therein averred and set forth, gave or vested this honorable court with jurisdiction, of either his person or the subject-matter, to declare or adjudicate him, your petitioner, a bankrupt. Your petitioner further would most respectfully represent, set forth, and state that this honorable court has been and was imposed upon by the said First National Bank of Indian-
77 apolis, through its said pretended agent, the said George W. Parker, in this, to wit: it is not set forth or stated in the said original petition or the amendment thereto that the said First National Bank had recovered a judgment, as is herein set forth and as in truth the fact is, on said twelve thousand dollar note against the said George W. Parker and Aquilla Parker, as hereinbefore fully set forth, charged, and stated, which said judgment your petitioner charges and claims having been rendered on the 23d of December, 1870, against the said George W. Parker and Aquilla Parker, in favor of the said First National Bank of Indianapolis, was and became a lien on real estate of the said two named judgment defendants of the value of more than one hundred thousand dollars, all of which said bank and the officers thereof well knew, notwithstanding all of which said facts the First National Bank did proceed to and cause to be procured the decree of bankruptcy against your petitioner, as is fully shown by the decree and proceedings of this cause, to which reference is made for greater certainty. Your petitioner further charges the fact to be that the said George H. Tenny, whose name appears first on said promissory note of twelve thousand dollars, was the principal in the same. Your petitioner and the said Aquilla
78 Parker and George W. Parker, each being alike, were securities for the said George H. Tenny, all of which said facts the said First National Bank, the petitioning creditor herein, as also each and both of the said Parkers, well knew, and with reference to which facts said loan and all acts in reference thereto were had, transacted, made, and consum'ated

Your petitioner further states the fact to be that he did not know of the existence of said suit in said Marion circuit court, or of the rendition of said judgment therein, against said George W. Parker & Aquila Parker, until within the last few days past, and until since the last order in bankruptcy in said cause. Your petitioner states the fact to be that he was not at time said proceedings in bankruptcy were commenced insolvent or a bankrupt, and never has been or is he now insolvent. He also most positively states and declares the fact to be that he never intended or contemplated or done or committed any act of bankruptcy whatever, and that all statements or charges to the contrary are wholly false and untrue, as would, as your petitioner believes, have been found by a jury on the issue made in this cause, which right of trial by a jury he has never waived, and as he is advised the record of this cause
79 shows he never has waived or abandoned.

Your petitioner further states that the said claimed indebtedness of the said First National Bank of Indianapolis on said note of $12,000 is the only debt or claimed liability of your petitioner as security or otherwise existing or claimed to have existed at the time said proceedings in bankruptcy were commenced, or that now exist, in favor of said bank, or are claimed or pretended to exist in favor of said bank, or

that has ever at any time existed since said proceedings were commenced in its favor.

Your petitioner, in view of the facts hereinbefore stated, says there is manifest error in the said proceedings in bankrupteya gainst him, in this to wit:

1st. The original petition conferred no jurisdiction upon this court to declare him a bankrupt within the meaning of the act of Congress providing for a uniform system of bankruptcy throughout the United States.

2nd. The amended petition conferred no such jurisdiction.

3rd. The trial by jury having been demanded in writing, and said demand not withdrawn or in any manner waived, it was not competent for the court to declare your petitioner a bankrupt.

80 4th. And in that the said proceedings was instituted and conducted without regard to the provisions of the said act of Congress.

And for these reasons appearing upon the record of said proceeding, and because of the fraudulent concealment of the fact of the recovery of the said judgment in the said Marion circuit court, and other fraudulent conduct about the of the said First National Bank of Indianapolis, your petitioner, prays the court for a review of the record of the said proceedings in bankruptcy, that the decree declaring your petitioner to be a bankrupt be set aside and vacated, and the amended and original petition of the said bank be dismissed, and that your petitioner's estate be restored to him. And for such other and further relief in the premises as may be equitable and just.

HARVEY SANDUSKY.

HUFF & LANGDON &
BRACKET & REILEY,
Sols. & Counsel for Harvey Sandusky.

81 District court of the United States, southern district of Illinois.

Harvey Sandusky, the above-named petitioner, being sworn before me, on oath says, the facts set forth in the foregoing petition by him subscribed, as far as stated from his own knowledge, are true; and as far as stated upon information and advice derived from others, he believes them to be true as in this said petition stated.

HARVEY SANDUSKY.

Subscribed and sworn to before me December 10, 1873.

M. B. CONVERSE,
U. S. Com'r.

(Endorsed:) Filed Dec. 10, 1873, at 2 o'clock p. m. Geo. P. Bowen, clerk.

Stipulation of counsel.

District court of the U. S., southern dist. of Illinois.

FIRST NATIONAL BANK OF INDIANAPOLIS, Indiana, *vs.* HARVEY SANDUSKY.	In bankruptcy. Chancery.

82 The rule for answer to the petition, in the nature of bill of review, filed by Sandusky, is to be extended till Saturday, January-

10, 1874; and should the plaintiff demur to the petition before answer, such demurrer is not to be presented before Tuesday, Jan'y 13th, 1874. But it is agreed that if the plaintiff choose to do so, it may file the answer & demurrer together; and such demurrer may be considered on final hearing as though filed before answer.

Jan'y 6, 1874.

BRACKET & REILLY &
HUFF & LANGDON,
Attys. for Sandusky.
HANNA & KNEFLER,
Attys. for First National Bank of Indianapolis.

(Endorsed:) Filed January 9, 1874, at 9 o'clock a. m. Geo. P. Bowen, clerk.

Amendment to bankrupt's petition.

District court of the United States, southern district of Illinois.

THE FIRST NATIONAL BANK OF INDIANAPOLIS
vs.
HARVEY SANDUSKY.
} In ch'ry. In bankruptcy.

83 Amendment to the petition, in the nature of a bill of review, filed in the above cause by the said Harvey Sandusky, on the 10th day of December, 1873.

By leave of the court, the said Sandusky amends his said petition, by showing to the court that as to the form and proceedings upon which the judgment in the circuit court of the county of Marion, in the State of Indiana, mentioned in the original petition of the said Sandusky, was recovered, there is a mistake therein; and that in fact the said judgment in the said Marion circuit was recovered in the manner and form set forth in the transcript of the record thereof, which is filed herewith, duly certified and authenticated, marked "Exhibit X," and made a part of the said original petition of the said Sandusky.

BRACKETT & REILLY,
HUFF & LANGDON,
Attys. for Sandusky.

STATE OF ILLINOIS,
County of Vermillion, ss:

Harvey Sandusky, being by me duly sworn, this 6th day of January, 1874, on oath says the matters set forth in this amendment to
84 his petition mentioned in said amendment are true, as he believes.

HARVEY SANDUSKY.

Subscribed and sworn to before me, a notary public of said county and State.

Jan. 6, 1874.

Witness my hand and notarial seal the date above written.

[L. S.] D. D. EVANS, *Notary Public.*

(Endorsed:) Filed January 9th, 1874, at 9 o'clock a. m. Geo. C. Bowen, clerk.

Be it remembered that, amongst the records of proceedings had, pleas filed, and judgments rendered in the Marion civil circuit court, in and for the county of Marion, in the State of Indiana, are the following, in the cause of—

THE FIRST NATIONAL BANK OF INDIANAPOLIS, plaintiff,
vs.
GEORGE H. TENEY, HARVEY SANDUSKY, Aquilla Parker, and George W. Parker, defendants. } No. 4679.

85 Be it known that heretofore, to wit. on the 23d day of December, 1870, the same being the 17th judicial day of the December term, 1870, of said court, begun, held, and continued at the court-house, in the city of Indianapolis, before the honorable John S. Tarkington, sole judge of said Marion civil circuit court, the following proceedings were had in said cause:

Comes the said plaintiff, by Hanna & Knefler, her attorneys, and files her complaint against said defendants, as follows, to wit:

STATE OF INDIANA,
County of Marion, ss:

Marion civil circuit court, November term, 1870.

The First National Bank of Indianapolis, plaintiff in this suit, complains of George H. Tenery, Harvey Sandusky, Aquilla Parker, and George W. Parker, defendants, and says that heretofore, to wit, on the 30th day of June, 1870, the defendants, George H. Tenery, Harvey Sandusky, and Aquilla Parker executed and delivered their promissory note in writing to the defendant, George W. Parker, in the words and figures following, to wit:

"$12,000. INDIANAPOLIS, *June* 30, 1870.

86 "Ninety days after date we promise to pay to the order of George W. Parker twelve thousand dollars, and five per cent. thereon for attorneys' fees, if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note, negotiable and payable at the First National Bank of Indianapolis, with ten per cent. interest after maturity until paid.

["$4.00 revenue-stamp.]

"GEORGE H. TENERY.
"HARVEY SANDUSKY.
"AQUILLA PARKER."

And that afterwards, to wit, before the maturity of said note, the defendant George W. Parker, by his endorsement in writing on the back of said note by the description of "Geo. W. Parker," for value received, assigned and endorsed said note to the plaintiff. That said note, prin-

cipal, interest accrued thereon, and attorney-fees, as specified on the face of said note, remains unpaid.

Wherefore plaintiff demands judgment for fifteen thousand dollars.

HANNA & KNEFLER,
Attorneys for Plaintiff.

87 And said plaintiff also files the affidavit and warrant of attorney of defendants, Aquila Parker and George W. Parker, duly executed according to law, the execution of all which is now duly proven to the satisfaction of the court, which affidavit and warrant of attorney are in these words:

Know all men by these presents that we, Aquila Parker and George W. Parker, of Marion County, and State of Indiana, do hereby authorize and empower Jared M. Bills, or any attorney at law of said State, to appear in the Marion civil circuit court of Marion County, in the State of Indiana, at any regular term thereof, and waive the issuing and service of process and receive a complaint or declaration in favor of the First National Bank of Indianapolis against them, and confess said action for such sum as may appear to said attorney to be due at such time of confessing judgment on a promissory note, in substance, as follows, viz:

"$12,000.] INDIANAPOLIS, *June* 30, 1870.

"Ninety days after date, we promise to pay to the order of George W. Parker twelve thousand dollars, and five per cent. thereon for attorneys' fees, if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws. The
88 drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note, negotiable and payable at the First National Bank of Indianapolis, with ten per cent. interest after maturity until paid.

"GEORGE H. TENERY.
"HARVEY SANDUSKY.
"AQUILA PARKER.

(Endorsed:) "Geo. W. Parker. Protest waived.

"And to permit a judgment to be then and there entered for such sum and costs, without any relief whatever from valuation or appraisement laws, and thereupon to release all error, and waive all right and benefit of appeal; and for what said attorney shall do in the premises this shall be a sufficient warrant.

"Witness our hands and seals this 25th day of November, 1870.

"AQUILA PARKER.
"GEO. W. PARKER.

"STATE OF INDIANA,
"*Marion County, ss:*

"Before me, a notary public in and for said county, this day came the said Aquila Parker and George W. Parker, and acknowledged the execution of the above warrant of attorney to be *his* act and deed
89 for the purposes therein mentioned, and being by me duly sworn, on their oath, say that the said debt is just and owing, and that such confession is not made, nor is the above warrant of attorney given,

nor is the judgment to be entered thereon confessed or to be confessed for the purpose of defrauding their creditors, or any of them.

"AQUILA PARKER.
"GEO. W. PARKER.

"Acknowledged, subscribed, and sworn to before me this twenty-fifth day of November, A. D. 1870, as witness my hand and notarial seal.

[L. S.] "FRED. KNEFLER,
"*Notary Public, Marion County, State of Indiana.*"

And now comes Jared M. Bills, esq., an attorney at law of this court, and by virtue of said warrant of attorney enters an appearance h for said defendants Aquila Parker and George W. Parker, and waives the issuance and service of process herein, and waives all error and benefit of appeal, and admits that the allegation of the plaintiff's complaint are true, and confesses that the plaintiff has sustained damages by reason of the premises in the sum of $12,904.50.

Therefore it is ordered and adjudged by the court that the plaintiff recover of said defendants Aquila Parker and George W. Parker
90 said sum of twelve thousand nine hundred and four dollars and fifty cents, ($12,904.50,) her damages as aforesaid confessed, and also her costs and charges about the recovery thereof laid out and expended, taxed at dollars, all without any relief whatever from valuation or appraisement laws.

On motion of the plaintiff, summons is ordered to issue against defendants, George H. Tenery and Harvey Sandusky, returnable at the February term, 1871, of this court, and this cause is continued as to them.

And afterwards, to wit, on the 21st day of February, 1871, being the 2d judicial day of the February term, 1871, of said court, begun, held, and continued as aforesaid, before the honorable John S. Tarkington, sole judge as aforesaid, the following proceedings were had in said cause:

Comes the plaintiff, by her attorneys, and on her motion this cause is continued as to the defendants, George H. Tenery and Harvey Sandusky, for process.

And afterwards, to wit, on the 19th day of September, 1871, being the 2d judicial day of the September term, 1871, of said court, begun, &c., as aforesaid, before the honorable John S. Tarkington, sole judge as aforesaid, the following proceedings were had in said cause:
91 On plaintiff's motion, this cause is continued for service of process as to defendants Sandusky and Tenery.

And afterwards, to wit, on the 16th day of January, 1872, being the 38th judicial day of the December term, 1871, begun, &c., as aforesaid, before the honorable John S. Tarkington, sole judge as aforesaid, the following proceedings were had in said cause:

Comes the plaintiff, and on her motion the continuance heretofore entered in this case is by the court set aside. Thereupon the plaintiff, by leave of the court, dismisses this suit as to said defendants George H. Tenery and Harvey Sandusky. It is therefore considered by the court that the defendants Tenery and Sandusky recover of the plaintiff their costs and charges herein expended, taxed at dollars & cents.

STATE OF INDIANA,
Marion County, ss:

I, William J. Wallace, clerk of the Marion civil circuit court in and for said county and State aforesaid, do hereby certify that the above and foregoing is a true, full, correct, and complete transcript of the proceedings had, papers filed, and judgments rendered in the
92 above-entitled cause, as fully and completely as the same appear of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Indianapolis, this eighth day of December, A. D. 1873.

[L. S.] WILLIAM J. WALLACE,
Clerk Marion Civil Circuit Court.

STATE OF INDIANA,
Marion County, ss:

I, Livingston Howland, sole judge of the Marion civil circuit court, and judge of the 19th judicial circuit of the State of Indiana, do hereby certify that Marion County, in the State of Indiana, is comprised within and is a part of the said 19th judicial circuit of said State, and that the foregoing attestation and certificate of William J. Wallace are in due form of law, and that the said William J. Wallace is, and at the time of the making of said certificate and attestation was the clerk of the said Marion civil circuit court of said State, and is, and at said time was, the proper officer to make such attestation and certificate, and that his signature thereto is genuine.

93 Witness my hand and the seal of the said court affixed at Indianapolis this 9th day of December, 1873.

[L. S.] LIVINGSTON HOWLAND,
Judge 19th Circuit, Indiana.

STATE OF INDIANA,
Marion County, ss:

I, William J, Wallace, clerk of the Marion civil circuit court, in the State of Indiana, do hereby certify that the Hon. Livingston Howland, whose signature appears to the foregoing certificate, is, and was at the time of signing said certificate, the presiding and sole judge of said court, duly commissioned and qualified in accordance with the laws of the State of Indiana.

In testimony whereof I have hereunto set my hand and the seal of said court, affixed at Indianapolis this ninth day of December, A. D. 1873.

[L. S.] WILLIAM J. WALLACE,
Clerk Marion Civil Circuit Court.

(Endorsed:) Filed January 9th, 1874, at 9 o'clock a. m. Geo. P. Bowen, clerk.

94 District court of the United States for the southern district of Illinois.

To the honorable Samuel H. Treat, judge of said district court:

The answer of the First National Bank of Indianapolis, Indiana, a corporation doing business under and by virtue of the laws of the United States, to the petition of Harvey Sandusky.

Respondents, now and all times hereafter saving to themselves all and

all manner of exceptions, benefit, or advantage that can or may be had or taken to the many errors, uncertainties, and imperfections in the said petition contained, for answer thereto or so much thereof as these respondents are advised it is material or necessary for them to make answer to, answering say, that it is true that these respondents did on the 25th day of August, A. D. 1871, file in this court a petition against the said Harvey Sandusky asking that he be declared a bankrupt, and that on the 5th day of September, A. D. 1871, the said Sandusky appeared by counsel and filed a denial of the acts of bankruptcy in said petition alleged, and demanded a jury; whereupon said cause was contributed to the January term, A. D. 1872.

Respondents, further answering, say that on the 23d day of
95 January, A. D. 1872, the said Sandusky having, after the filing of their said petition, departed the State of Illinois, any being a trader fraudulently stopped payment of his commercial paper, which facts coming to the knowledge of your respondents, they through their counsel asked and obtained leave of the court to amend their said petition; that after said amendment, the said Sandusky withdrew his denial of the act of bankruptcy charged in said petition and was thereupon adjudicated a bankrupt by order of this court upon the petition as amended; your respondents herewith file copies of said petition and the order of adjudication in said case, which they pray may be taken as part of their answer.

Your respondents, further answering, say that they are informed and believe and expect to prove that it is not true that the claim against said Sandusky as set out in their said petition was obtained by George H. Tenery as principal, and that said Sandusky was a co-surety with Aquila Parker; on the contrary they charge that the money was procured for the benefit of the said Harvey Sandusky, that the same was paid to him over the counter of your respondents' bank, and that it was used by him to satisfy his individual debts. Respondents admit that they did on the 23d day of December, A. D. 1870, in the Marion civil circuit court of the county of Marion and State of Indiana,
96 obtain a judgment for the full amount of their said claim set out in their petition in bankruptcy against George W. Parker and Aquila Parker, which judgment still remains wholly unpaid; but they deny that said Sandusky or the said George H. Tenney were parties to said suit or that summons ever issued against them.

Respondents state that they were informed and believe that the said George W. Parker and Aquila Parker signed the said note for the accom'odation of said Harvey Sandusky, who is a relative of the said Parkers; that the judgment in the Marion civil court, as aforesaid, was obtained in order to better secure the money due your respondents, and not for the purpose of collecting the same from George W. and Aquila Parker unless they failed to collect the same of said Sandusky. Respondents herewith file a certified copy of the proceedings in the suit in the Marion civil court, which they pray may also be taken as a part of their answer, and from which it will appear that the rights of your respondents against the said Sandusky and Tenery are in no way affected by said proceeding.

Respondents, further answering, say that a period of almost two years have elapsed since the adjudication in bankruptcy against said Sandusky was ordered; that soon after said adjudication the said Sandusky returned to the State of Illinois, after an absence of several months, during
97 which absence, neither his neighbors knew, or any of his family claimed to know of his whereabouts; that he was present at the

STATE OF INDIANA,
Marion County, ss:

I, William J. Wallace, clerk of the Marion civil circuit court in and for said county and State aforesaid, do hereby certify that the above and foregoing is a true, full, correct, and complete transcript of the proceedings had, papers filed, and judgments rendered in the
92 above-entitled cause, as fully and completely as the same appear of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Indianapolis, this eighth day of December, A. D. 1873.

[L. S.] WILLIAM J. WALLACE,
Clerk Marion Civil Circuit Court.

STATE OF INDIANA,
Marion County, ss:

I, Livingston Howland, sole judge of the Marion civil circuit court, and judge of the 19th judicial circuit of the State of Indiana, do hereby certify that Marion County, in the State of Indiana, is comprised within and is a part of the said 19th judicial circuit of said State, and that the foregoing attestation and certificate of William J. Wallace are in due form of law, and that the said William J. Wallace is, and at the time of the making of said certificate and attestation was the clerk of the said Marion civil circuit court of said State, and is, and at said time was, the proper officer to make such attestation and certificate, and that his signature thereto is genuine.

93 Witness my hand and the seal of the said court affixed at Indianapolis this 9th day of December, 1873.

[L. S.] LIVINGSTON HOWLAND,
Judge 19th Circuit, Indiana.

STATE OF INDIANA,
Marion County, ss:

I, William J, Wallace, clerk of the Marion civil circuit court, in the State of Indiana, do hereby certify that the Hon. Livingston Howland, whose signature appears to the foregoing certificate, is, and was at the time of signing said certificate, the presiding and sole judge of said court, duly commissioned and qualified in accordance with the laws of the State of Indiana.

In testimony whereof I have hereunto set my hand and the seal of said court, affixed at Indianapolis this ninth day of December, A. D. 1873.

[L. S.] WILLIAM J. WALLACE,
Clerk Marion Civil Circuit Court.

(Endorsed:) Filed January 9th, 1874, at 9 o'clock a. m. Geo. P. Bowen, clerk.

94 District court of the United States for the southern district of Illinois.

To the honorable Samuel H. Treat, judge of said district court:

The answer of the First National Bank of Indianapolis, Indiana, a corporation doing business under and by virtue of the laws of the United States, to the petition of Harvey Sandusky.

Respondents, now and all times hereafter saving to themselves all and

all manner of exceptions, benefit, or advantage that can or may be had or taken to the many errors, uncértainties, and imperfections in the said petition contained, for answer thereto or so much thereof as these respondents are advised it is material or necessary for them to make answer to, answering say, that it is true that these respondents did on the 25th day of August, A. D. 1871, file in this court a petition against the said Harvey Sandusky asking that he be declared a bankrupt, and that on the 5th day of September, A. D. 1871, the said Sandusky appeared by counsel and filed a denial of the acts of bankruptcy in said petition alleged, and demanded a jury; whereupon said cause was contributed to the January term, A. D. 1872.

Respondents, further answering, say that on the 23d day of
95 January, A. D. 1872, the said Sandusky having, after the filing of their said petition, departed the State of Illinois, any being a trader fraudulently stopped payment of his commercial paper, which facts coming to the knowledge of your respondents, they through their counsel asked and obtained leave of the court to amend their said petition; that after said amendment, the said Sandusky withdrew his denial of the act of bankruptcy charged in said petition and was thereupon adjudicated a bankrupt by order of this court upon the petition as amended; your respondents herewith file copies of said petition and the order of adjudication in said case, which they pray may be taken as part of their answer.

Your respondents, further answering, say that they are informed and believe and expect to prove that it is not true that the claim against said Sandusky as set out in their said petition was obtained by George H. Tenery as principal, and that said Sandusky was a co-surety with Aquila Parker; on the contrary they charge that the money was procured for the benefit of the said Harvey Sandusky, that the same was paid to him over the counter of your respondents' bank, and that it was used by him to satisfy his individual debts. Respondents admit that they did on the 23d day of December, A. D. 1870, in the Marion civil circuit court of the county of Marion and State of Indiana,
96 obtain a judgment for the full amount of their said claim set out in their petition in bankruptcy against George W. Parker and Aquila Parker, which judgment still remains wholly unpaid; but they deny that said Sandusky or the said George H. Tenney were parties to said suit or that summons ever issued against them.

Respondents state that they were informed and believe that the said George W. Parker and Aquila Parker signed the said note for the accom'odation of said Harvey Sandusky, who is a relative of the said Parkers; that the judgment in the Marion civil court, as aforesaid, was obtained in order to better secure the money due your respondents, and not for the purpose of collecting the same from George W. and Aquila Parker unless they failed to collect the same of said Sandusky. Respondents herewith file a certified copy of the proceedings in the suit in the Marion civil court, which they pray may also be taken as a part of their answer, and from which it will appear that the rights of your respondents against the said Sandusky and Tenery are in no way affected by said proceeding.

Respondents, further answering, say that a period of almost two years have elapsed since the adjudication in bankruptcy against said Sandusky was ordered; that soon after said adjudication the said Sandusky returned to the State of Illinois, after an absence of several months, during
97 which absence, neither his neighbors knew, or any of his family claimed to know of his whereabouts; that he was present at the

first and second sale of his real estate by the assignee of his estate; that he advised parties to buy the effects of said estate; that he procured one William Parker to bid for him on the land belonging to his said estate at the first sale made by J. G. English, his assignee; that he, from time to time, consulted with the said assignee as to the best mode of selling said estate; that at the last sale of real estate belonging to said Sandusky, his wife, with his knowledge and consent, bid off a large portion of said real estate; that he has filed in this court a claim, and the same was allowed and paid, for one thousand, dollars in lieu of the homestead to which he is entitled under the bankrupt law; that since said adjudication, the said Sandusky has visited the said George W. Parker, in the State of Indiana, and remained at his house several days and talked fully with the said Parker as to his liability as principal of said note as set out in the petition of your respondents; that he urged the said Parker to buy, and Aquila Parker did buy, at his request, a portion of the real estate of the said Sandusky, when sold by the assignee, J. G. English; that said Sandusky never claimed, so far as your respondents know, that he was liable on the note due your respondents only as surety, until the filing of his said petition asking a review of the proceedings in bankruptcy against him.

98 Respondents, further answering, say that the said Sandusky advised the assignee of his estate to bring suit against various parties, and did, on the 7th day of October, A. D. 1872, voluntarily appear as a witness in a suit then pending in the circuit court of the United States for the southern district of Illinois, wherein the said assignee was plaintiff, and John Faulds and others were defendants, and testified in behalf of said assignee, who sued for the creditors of said estate; and respondents further charge that on the 31st day of December, A. D. 1872, almost one year after the adjudication as aforesaid, the said Sandusky voluntarily appeared and was examined as a witness in the case of Jos. G. English, assignee of said estate, vs. Telford et als., now pending in this court, which examination was reduced to writing, and duly sworn to, and now on file in said cause, wherein the said Sandusky, in behalf of said assignee, in a suit to set aside a mortgage charged to be fraudulent, executed by said Harvey Sandusky on the 10th day of August, A. D. 1871, less than 30 days prior to the filing of your respondents' petition in bankruptcy, and the said Sandusky, in said written examination, testified under oath that said mortgage was executed to the said Telford et als. for the sole purpose of evading the payment of the claim due your respondents, said mortgage being given

99 to secure ten thousand dollars, when in point of fact he owed the said Telford the sum of twenty-five hundred dollars. Your respondents ask that said written examination now on file in said case be taken as part of their answer.

Your respondents, further answering, state that they are informed and believe and expect to prove that many creditors, having claims against he said Sandusky, have duly proved the same and filed them in the bankupt proceedings against the said Sandusky; that said claims amount o over twenty-five thousand dollars, exclusive of your respondents' claim; hat the said Sandusky has not only had full knowledge of the claim ue your respondents, but of other claims filed in said bankrupt proeedings; that he has stood by, without offering any objection to the many claims so proved; that he has had full op'ortunity to make his defence to your respondents' claim; that at this late day he is estopped from setting up his defence.

Respondents charge that he was insolvent at the time your respond-

ents filed their petition, and was guilty of the act of bankruptcy therein charged; that he is still insolvent; that the assets scheduled by him being insufficient to pay his liabilities, not including the costs and expenses incurred in the proceedings in bankruptcy. Wherefore your respondents ask that the prayer of his petition be refused and that your respondents be allowed their costs, &c.

100 FIRST NATIONAL BANK OF INDIANAPOLIS, IND.,
By JNO. C. NEW, *Cashier.*

And hereto affix the seal of said bank.
[L. S.] JNO. C. NEW, *Ca'r.*

District court of the United States, for the southern district of Illinois.

To the honorable Samuel H. Treat, judge of said district court:

The answer of George W. Parker to the petition of Harvey Sandusky.

Respondent, now and at all times hereafter saving to himself all and all manner of exceptions, benefit, or advantages that can or may be had or taken to the many errors, uncertainties, and imperfections in the said petition contained, for himself thereto or to so much thereof as this respondent is advised it is material or necessary for him to make answer to, answering, says that he has carefully read the answer of the First National Bank of Indianapolis, Indiana, to the said petition of the said Harvey Sandusky, and which answer is filed herewith, and he hereby adopts the same, and each and every matter and fact therein averred, as and for his own answer, as fully and completely as though all the matters and facts therein recited were recited and stated herein, and in addition thereto he says that neither he or Aquila Parker ever at any time
101 rec'ived any part or portion of the moneys obtained from the First National Bank of Indianapolis, Indiana, at the time of the execution of the note to said bank or at any time thereafter; that he and said Aquila Parker signed said note in the manner in which they and each of them did sign the same for the sole accom'odation of Harvey Sandusky, who obtained and received the money, and, as this respondent is informed and believes, thereafter used the same in discharging his individual liabilities; that the said Sandusky has on several occasions, since he has been adjudicated a bankrupt, admitted to this respondent that said sum due the bank was his debt, and the said Tenery, the party whose name appears to said note, has stated to this respondent and others that he was simply a surety for said Sandusky, who was the real borrower and debtor, and that he, said Tenry, got no part of said money. Your respondent further says that he has not paid the bank any part of said indebtedness, but that the whole thereof remains unpaid. Your respondent further says that said Harvey Sandusky well knew of the rendition of said judgment in the Marion civil circuit court long before the original petition in bankruptcy was filed in this court; that shortly after *after* the rendition of the same he informed Sandusky of the fact, saw him in person and told him, and talk*ing* to him about it. Where-
102 fore your respondent*s* ask' the prayer of the petition of said Sandusky be refused, and that your respondent be allowed his costs, all of which your respondent ver'fies.

GEO. W. PARKER.

Subscribed and sworn to before me this 10th day of January, A. D. 1874.

FRED. KNEFLER,
U. S. Commissioner, District of Indiana.

(Endorsed:) Filed January 13, 1874, at 1.30 o'clock p. m. Geo. P. Bowen, clerk.

Be it known that amongst the records of the proceedings of the Marion civil circuit court of the county of Marion, in the State of Indiana, are found the following in the cause of—

THE FIRST NATIONAL BANK OF INDIANAPOLIS
vs.
GEORGE H. TENERY, HARVEY SANDUSKY, AQUILA PARKER, and GEORGE W. PARKER.

Be it remembered, that heretofore, to wit, at a term of the Marion civil circuit court of the county of Marion, in the State of Indiana, begun, holden, and continued at the court-house in the city of Indianapolis on the 23d day of December, 1870, the same being the seventeenth
103 judicial day of the November term, 1870, of the said Marion civil circuit court, before the honorable John S. Tarkington, judge of the fifth judicial circuit court, comes said plaintiff by her attorneys, Hanna and Knefler, and filed in open court the following complaint in words & figures following, to wit:

STATE OF INDIANA, *County of Marion:*

Marion civil circuit court, November term, 1870.

The First National Bank of Indianapolis, plaintiff in this suit, complains of George H. Tenery, Harvey Sandusky, Aquila Parker, and George W. Parker, defendants, and says that heretofore, to wit, on the 30th day of June, 1870, the defendant' George H. Tenery, Harvey Sandusky, and Aquila Parker, executed and delivered their promissory note in writing to the defendant Geo. W. Parker, in the words and figures following, to wit:

$12,000. INDIANAPOLIS, *June* 30, 1870.

Ninety days after date we promise to pay to the order of George W. Parker twelve thousand dollars, and five per cent. thereon for attorney's fees if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note, negotiable and payable
104 at the First National Bank of Indianapolis, with ten per cent. interest after maturity until paid.

GEORGE H. TENERY.
HARVEY SANDUSKY.
AQUILA PARKER.

And that afterwards, to wit, before the maturity of said note, the defendant George W. Parker, by his endorsement in writing on the back of said note, by the description of George W. Parker for value received, assigned and endorsed said note to the plaintiff. That said note, principal

and interest accured thereon, and attorney's fees as specified on the face of said note, remain unpaid.

Wherefore plaintiff demands judgment for fifteen thousand dollars.

HANNA AND KNEFLER,
Attorneys for Plaintiff.

And said plaintiff also filed the affidavit and warrant of attorney of defendants, Aquila Parker and George W. Parker, duly executed according to law, the execution of all which is now duly proven to the satisfaction of the court, which affidavit and warrant of attorney are in these words:

Know all men by these presents that we, Aquila Parker and George W. Parker, of Marrion County and State of Indiana, do hereby
105 authorize and empower Jared M. Bills, or any attorney at law of said State, to appear in the Marion civil circuit court of Marion County, in the State of Indiana, at any regular term thereof, and waive the issuing and services of process, and receive a complaint or declaration in favor of the First National Bank of Indianapolis against them, and confess said action for such sum as may appear to said attorneys to be due at such time of confessing judgment on a promissory note, in substance as follows, viz:

INDIANAPOLIS, *June* 30, 1870.

Ninety days after date we promise to pay to the order of George W. Parker twelve thousand dollars, and five per cent. thereon for attorney's fees if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and non-payment of this note, negotiable and payable at the First National Bank of Indianapolis, with ten per cent. interest after maturity until paid.

GEORGE H. TENERY.
HARVEY SANDUSKY.
AQUILA PARKER.

(Endorsed:) GEORGE W. PARKER. Protest waived.

106 And to permit a judgment to be then and there entered for such sum and costs, without any relief whatever from valuation or appraisement laws, and thereupon to release all error and waive all right and benefit of appeal, and for what said attorney shall do in the premises this shall be a sufficient warrant.

Witness our hands and seals this 25th day of November, 1870.

AQUILA PARKER. [SEAL.]
GEORGE W. PARKER. [SEAL.]

STATE OF INDIANA,
Marion County, ss:

Before me, a notary public in and for said county, this day came the said Aquila Parker and George W. Parker, and acknowledged the execution of the above warrant of attorney to be his act and deed for the purpose therein mentioned, and being by me duly sworn on their oath, say that the said debt is just and owing; that such confession is not made, nor is the above warrant of attorney given, nor is the judgment to be entered thereon, confessed, or to be confessed, for the purpose of defrauding their creditors or any of them.

AQUILA PARKER.
GEO. W. PARKER.

Acknowledged, subscribed, and sworn to before me this 25th
107 day of November, A. D. 1870, as witness my hand and notarial seal.

FRED. KNEFLER,
Notary Public, Marion County, State of Indiana.

And now comes Jared M. Bills, esq., an attorney at law of this court, and, by virtue of said warrant of attorney, enters an appearance herein for said defendants, Aquila Parker and George W. Parker, and waives the issuance and service of process herein, and waives all error or benefit of appeal, and admits that the allegations of the plaintiff's complaint are true, and confesses that the plaintiff has sustained damage by reason of the premises in the sum of $13,904.50.

Therefore, it is ordered and adjudged by the court that the plaintiff recover of said defendants, Aquila Parker and George W. Parker, said sum of twelve thousand nine hundred and four dollars and fifty cents, ($12,904.50,) her damages as aforesaid confessed, and also her costs and charges about the recovery thereof laid out and expended, taxed at dollars, all without any relief from valuation or appraisement laws.

On motion of the plaintiff, summons is ordered to issue against defendants George H. Tenery and Harvey Sandusky, returnable at
108 the February term, 1871, and this cause is continued as to them.

Afterwards, to wit, on the 21st day of February, 1871, the same being the 2d judicial day of the February term, 1871, of said court, held at the court-house, in the city of Indianapolis, before the Hon. John S. Tarkington, judge, the following proceedings were had in said entitled cause:

Comes the plaintiff by her attorneys, and on her motion this cause is continued as to defendants, Tenery and Sandusky, for process.

Afterwards, to wit, on the 19th day of September, 1871, the same being the 2d judicial day of the September term, 1871, of said court, held at the court-house aforesaid, before the Hon. John S. Tarkington, judge of said court, the following proceedings were had in said entitled cause.

On plaintiff's motion, this cause is continued for service of process as to defendants, Sandusky and Tenery.

Afterwards, to wit, on the 19th day of January, 1872, the same being the 41st judicial day of the December term, 1871, of said court, before the Hon. John S. Tarkington, judge, the following proceedings
109 were had in said entitled cause.

Comes the plaintiff, and on her motion the continuence heretofore entered in this case is by the court set aside.

Thereupon the plaintiff, by leave of the court, dismisses this suit as to said defendants, George W. Tenery and Harvey Sandusky.

It is therefore considered by the court the said defendants, Tenery and Sandusky, recover of the plaintiffs their costs and charges herein expended, taxed at dollars and cents.

STATE OF INDIANA,
Marion County, ss:

I, William J. Wallace, clerk of the Marion civil circuit court of the county of Marion, in the State of Indiana, do hereby certify that the

foregoing is a full and true copy of the proceedings had, judgment rendered, and papers filed, and as appear of record and on file in my office, and asked for by plaintiff's attorney, and I further certify that, in fact, no summons was *was* ever issued against said defendants, George H. Tenery and Harvey Sandusky, in this case.

Given under my hand and the seal of said court, at the city of
110 Indianapolis, this 3d day of January, 1874.

[L. S.] WILLIAM J. WALLACE,
Clerk Marion Civil Circuit Court.

STATE OF INDIANA,
Marion County, ss:

I, Livingston Howland, sole judge of the Marion civil circuit court and judge of the nin'teenth judicial circuit of the State of Indiana, do hereby certify that Marion County, in the State of Indiana, is comprised within and is a part of the said nineteenth judicial circuit of said State, and that the foregoing attestation and certificate of William J. Wallace are in due form of law, and that the said William J. Wallace is, and at the time of the making of said certificate and attestation was, the clerk of the said Marion civil circuit court of said State, and is, and at said time was, the proper officer to make such attestation and certificate, and that his signature thereto is genuine.

Witness my hand and the seal of the said court, affixed at Indianapolis, this fifth day of January, 1874.

[L. S.] LIVINGSTONE HOWLAND,
Judge 19th Circuit, Indiana.

111 STATE OF INDIANA,
Marion County, ss:

I, William J. Wallace, clerk of the Marion civil circuit court, in the State of Indiana, do hereby certify that Livingstone Howland, whose signature appears to the foregoing certificate, is, and was at the time of signing said certificate, the presiding and sole judge of said court, duly commissioned and qualified, in accordance with the laws of the State of Indiana.

In testimony whereof I have hereunto set my hand and the seal of said court, affixed at Indianapolis, this fifth day of January, A. D. 1874.

[L. S.] WILLIAM J. WALLACE,
Clerk Marion Civil Circuit Court.

(Endorsed:) Filed Jan'y 13, 1874, at 4 o'clock p. m. Geo. P. Bowen, clerk.

Replication of H. Sandusky.

In the district court of the United States for the southern district of Illinois, of the January term, A. D. 1874, thereof.

IN THE MATTER OF THE BANKRUPTCY OF }
Harvey Sandusky. }

The replication of Harvey Sandusky to the answer of the First National Bank of Indianapolis, Indiana.

112 For reply to said answer of said First National Bank of Indianapolis, Indiana, the said Harvey Sandusky states upon oath that

he never was in fact a bankrupt, nor was he ever guilty of any act or acts of bankruptcy, as charged in either the original or amended petitions of said First National Bank of Indianapolis, Indiana; but that, on the contrary, he has always been, and is now, solvent, and that he has asked and demanded heretofore, under the provisions of the bankrupt law, that a jury be called and sworn to try this question.

He further states and swears that he never at any time authorized or empowered any person or persons whatsoever to take away from him, or in his behalf to waive, his right to such trial by jury.

He further states and swears that at the time of the alleged bankruptcy and at the time of the filing of the said original and amended petitions, he was the owner of real estate and other property to a large amount, to wit, not less than ninety thousand dollars, ($90,000,) as here set forth, viz:

940 acres of land, (Home farm,) @ $60	$56,400	
973 shares of the stock of the Chicago Carbon Coal Company, of $100 each, (purchased for $25 each,) @ $25	24,325	
160 acres of land, (Sanger farm,) cost	8,000	
Property in Catlin, residences, &	1,500	
113 Coal & mineral under the Taylor farm, cost	1,000	00
Coal & mineral under the Bate farm, cost	500	0
House and lot in Champaign City	1,000	
	$92,725	

He further states and swears that in the transaction with the said First National Bank of Indianapolis, Indiana, that one George H. Tenney was the principal; that the moneys obtained from said bank were obtained for the sole use and benefit of said Tenney; that said Tenney negotiated the loan of said moneys, and that they were paid out to his sole and individual order; that said Harvey Sandusky, together with George W. Parker and Aquila Parker, merely signed the note given by said Tenney as co-sureties; and that all these facts and circumstances were well known to the said First National Bank of Indianapolis, Indiana, and to the officers thereof, who were informed of them at the time the negotiation was had.

Wherefore repliant prays this honorable court to award him a trial by jury, and that this cause be tried under such stipulation or agreement as may be made by and between the parties.

HARVEY SANDUSKY.

114 Subscribed and sworn to before me this 20th day of January, A. D. 1874.

M. B. CONVERSE,
U. S. Commissioner.

(Endorsed:) Filed January 20th, 1874, at 1.20 o'clock p. m. Geo. P. Bowen, clerk.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the United States district court.

IN THE MATTER OF THE PETITION OF H. SANDUSKY to set aside proceedings in bankruptcy.

It is stipulated in the above case that the answers of the 1st National

Bk. of Indianapolis, Indiana, and Geo. W. Parker, shall stand at a demurrer to the petition in this case; that if the same is overruled, then the case shall be set for trial on the day said demurrer is overruled, and the evidence taken before some commissioner appointed by the court, and the matter submitted on said evidence & petition and answer. It is agreed that the demurrer will be taken up on the 3d day of February, 1874.

Springfield, Illin., Jany. 22d, 1874.

STUART, EDWARDS & BROWN,
For Respondents.

HUFF & LANGDON,
BRACKETT & REILLY,
Attys. for Sandusky.

115 (Endorsed:) Filed January 22, 1874, at 11.15 o'clock a. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

THURSDAY, *February 12th*, 1874.

Before the Hon. Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

Now comes the said Harvey Sandusky, by S. A. Huff and Edward H. Brackett, esqrs., his attorneys, and also the First National Bank of Indianapolis by Messrs. Hanna & Knefler, and Stuart, Edwards & Brown, its attorneys, and thereupon come, on to be heard the demurrer of the said First National Bank of Indianapolis to the petition of the said Harvey Sandusky to set aside the adjudication of bankruptcy entered against him in this cause, and the court, having heard the said demurrer and the arguments of counsel thereon, not being sufficiently advised in the premises, takes time to consider.

Order overruling demurrer, &c.

116 In the district court of the United States for the southern district of Illinois.

MONDAY, *February 16th*, 1874.

Before the Hon. Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, BANKRUPT. } In bankruptcy.

Now comes the said Harvey Sandusky, by S. A. Huff and Edward H. Bracket, esqrs., his attorneys; and also comes the First National Bank of Indianapolis, by Messrs. Hanna & Knefler, and Stuart, Edwards & Brown, its attorneys, and the court having heard the arguments of counsel, and being sufficiently advised upon the demurrer of the said First National Bank of Indianapolis to the petition of the said Harvey Sandusky to set aside the adjudication of bankruptcy heretofore entered against him, it is ordered that said demurrer be overruled.

And the said First National Bank of Indianapolis, by its said attorneys, having filed its answer to said petition in accordance with stipu-

lation of parties filed herein, the said Harvey Sandusky, by his said attorneys, filed his exceptions to said answer.

It is thereupon ordered by the court that said exceptions be set down for hearing at a future day.

117 District court of the United States for the southern district of Illinois.—In bankruptcy.

IN THE MATTER OF THE PETITION OF THE
First National Bank of Indianapolis
against
HARVEY SANDUSKY.

Exception to the answer of the First National Bank of Indianapolis, to the petition filed by the said Harvey Sandusky herein.

For exception to the said answers, the said Sandusky shows to the court that in his said petition he charges the facts to be that, before the said bank filed its petition in bankruptcy against said Sandusky, a judgment had been recovered by the said bank, in a court of competent jurisdiction, on the note held by the bank, executed by said Sandusky, & Tenny and Aquila Parker, as makers, and endorsed by the said George W. Parker, against the said Aquila Parker and George W. Parker; that said judgment was by confession, upon warrant of attorney, and without process of summons as to the said Sandusky & Tenney; all of which facts are set forth in the transcript exhibited with the petition of said Sandusky, whereby it is shown that the said note is joint merely, and not joint and several, and the said facts, so averred, are admitted and not denied by the said answer; and it is also averred in
118 said Sandusky's petition, that the said Aquila Parker and George W. Parker were the owners of real estate in Marion County, Indiana, at the time said judgment was recovered, to the value of more than the said judgment, on which the same became a lien; which fact is not denied nor in any wise answered.

It is also charged in the said Sandusky's petition that, up to near the time of filing his petition, he was ignorant of the fact that such judgment was recovered, and this fact is not denied or answered.

It is likewise charged that the bank imposed upon this court, through its pretended agent, George W. Parker, because in its petition, filed against said Sandusky, it is not set forth or stated, in the original or amended petition of the said bank against the said Sandusky, that the said First National Bank has so recovered said judgment in the said State court of Indiana; which last fact, so charged, is neither denied nor otherwise answered.

And it is also charged in the said Sandusky's petition that the said note upon which said judgment had been so recovered, was and is the only debt or claimed liability of the said Sandusky, in any form, to the said bank, and this fact is in no wise denied or answered:

Wherefore, the said Sandusky says the said answer, so filed
119 by the said bank, is insufficient, and ought not to preclude the relief prayed for in his petition.

HUFF & LANGDON, &
BRACKETT & REILLY,
Attys, for Sandusky.

(Endorsed:) Filed Feb'y 16, 1874, at 3.30 o'clock p. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

TUESDAY, *February 17th*, 1874.

Before the Hon. Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

Now comes again the said Harvey Sandusky, by S. A. Huff & Edward H. Brackett, esqrs., his attorneys, and also the First National Bank of Indianapolis, by Messrs. Hanna & Knefler, and Stuart, Edwards & Brown, its attorneys; and the court having heard the exceptions of the said Harvey Sandusky to the answer filed by the said First National Bank of Indianapolis to the petition of the said Sandusky:

120 It is ordered, that said exceptions be sustained, and that said First National Bank of Indianapolis have leave to file its supplemental answer to said petition within thirty days from this date.

In the district court of the United States for the southern district of Illinois.

The answer of the First National Bank of Indianapolis, Indiana, a corporation doing business at said place by virtue of the laws of the United States, to the petition of Harvey Sandusky.

These respondents, saving, reserving, and so forth, for answer to so much of said petition as they are advised it is necessary for them to answer, say:

It is true that on the 30th day of June, 1870, George H. Tenery, the said Harvey Sandusky, and Aquila Parker, at the city of Indianapolis, executed their promissory note, whereby they promised to pay to the order of one George W. Parker, ninety days after its date, the sum of twelve thousand dollars, and attorneys' fees if suit should be instituted on said note, without relief from the valuation and appraisement laws of the State of Indiana, with ten per cent. interest after maturity, negotiable and payable at the First National Bank of Indianapolis, and waiving demand of payment and protest and notice of protest and of non-payment as to drawers and endorsers.

121 It is also true that the said George W. Parker, as an accom'odation endorser, assigned said note to the said First National Bank of Indianapolis, and that your respondents discounted said note and paid the said sum of twelve thousand dollars over its counter.

It is also true that at the maturity of said note, the same remaining unpaid, your respondents filed a complaint upon it in the civil circuit court of Marion County, in the State of Indiana, against all of said makers and said endorser; that no process was ever issued, but the said Aquila Parker and the said George W. Parker appeared to said action; that the said petitioner and George H. Tenery being non-residents of the State of Indiana, no summons was ever issued against them or served on them, or either of them, and therefore no action was ever commenced by the statutes of Indiana against them, and such proceedings were had in said action that on the 23d day of December, 1870, in the said circuit court, that your respondents recovered a judgment against the said

Aquila and George Parker for the sum of $12,904.50, being for the amount of said note, with attorney's fees and interest; all which was within the jurisdiction of said court. Your respondents file herewith a certified copy of said proceedings in said circuit court of Marion
122 County, which they pray may be taken as a part of this, its answer.

It is also true that said judgment became a lien on the real estate of the said Parkers, as stated in said petition.

These respondents, however, deny that the said Tenery was the principal in said note, or that the said Sandusky was only security, or that the money paid as the proceeds of said note was paid over respondents' counter to the said Tenery. Respondents state and charge that in fact the said Sandusky was the principal, and the said Tenery and the said Parkers were only securities. That your respondents were informed, and then and now believe and charge that the said Sandusky was in fact, as aforesaid, the principal in said note; that the money was in fact loaned and borrowed for his use and benefit, and was actually paid by respondents, and received by said Sandusky over the counter of respondents; that these respondents never knew or believed, nor do they now know or believe that the said Tenery was the principal and the said Sandusky the security; on the contrary, they believe, know, and charge that the very reverse is true as aforesaid.

Amendment made by consent of parties April 14, 1874.

[Your respondents are informed and believe, and so charge, that the said Sandusky knew of the rendition of said judgment in the Marion civil circuit court, long
123 before the petition in bankruptcy was filed in this case.]

These respondents, further answering, say that these respondents did, on the 25th day of August, 1871, file in this court a petition praying that the said Sandusky should be adjudicated and declared a bankrupt under the bankrupt law of the United States, and that the principal cause assigned therefor was the non-payment of said note to these respondents within the time prescribed by said bankrupt law; that on the 5th day of September, 1871, the said Sandusky appeared by counsel in answer to said petition and filed a denial of said acts of bankruptcy in said petition alleged, and demanded a trial by a jury.

Whereupon the cause was continued to the January term, 1872; that on the 23d day of January, 1872, the said Sandusky having as your respondents were informed and believed left the State of Illinois, and, being a trader, had fraudulently stopped paying his commercial paper, both that due to these respondents, and also commercial paper due others, which your respondents charge were then owing by him more than fourteen days after the same became due, and which had come to their knowledge since the filing of their said petition, these respondents did then ask and obtain leave of this court to amend their said original petition; that thereupon your respondents
124 amended their said petition, alleging generally that said Sandusky, being such trader, had fraudulently stopped paying his commercial paper more than fourteen days and had thereby been guilty of acts of bankruptcy within the tenor and spirit of said bankrupt laws; that the amendment so filed as aforesaid was not intended and was not in fact an amended petition, but that it was intended and in fact was and did become an amendment to his said original petition and a part and parcel thereof; that after the filing of their said amendment the said Sandusky withdrew his denial of said acts of bankruptcy and his demand for a trial by jury, and suffered a decree in bankruptcy to go against him, and the said Sandusky was thereupon by this court adjudicated a

bankrupt. Your respondents file herewith copies of said petition, both original and as amended of since adjudication in bankruptcy and of all the proceedings subsequently had thereunder, all which they pray may be taken as a part of this their answer. Your respondents further charges that in all said proceedings and all the stages thereof the said Sandusky was fully represented by his attorney, Jno. E. Rosette, an able and duly-qualified attorney of this court, and he insists that all said proceedings were fair, regular, final, and conclusive.

125 These respondents insist that said petition in bankruptcy and proceedings thereunder conferred upon this court ample jurisdiction to declare the said Sandusky a bankrupt, within the meaning of the act of Congress providing for a uniform system of bankruptcy throughout the United States; that the demand for a trial by jury was withdrawn as aforesaid by the said Sandusky before the adjudication in bankruptcy as aforesaid, and that therefore the fact that such a demand had been made interposed no obstacle to such adjudication. These respondents deny any fraudulent concealment of said proceedings and judgment upon said note in the circuit court of Marion County, Indiana, or that this honorable court was imposed on. They deny that the omission to state such proceedings in their said petition arose from any fraudulent desire to conceal the facts, or that if stated the same could or ought to have interposed any obstacle to such adjudication in bankruptcy, and that when stated they furnish any reason to review such adjudication, or any reason why your respondents should not be allowed to prove and have their claim allowed, and paid out of the assets of said bankrupt. They state and charge that they omitted any statement of said proceedings because they did not think the statement of them was necessary, material, or proper in their said petition, be-

126 lieving as they did that the said Sandusky was one of the makers and in fact the principal debtor in said note. These respondents deny all fraud on their part, as charged in said petition. These respondents deny that the said Sandusky was solvent at the time of filing their said petition or at the time of said adjudication, or is now solvent as stated in his said petition.

These respondents, further answering, say, charge, and insist that the said Sandusky has waived all right to have a review of said proceedings in bankruptcy, and is estopped therefrom by the following acts and for the following reasons, to wit:

That a period of two years has elapsed since said adjudication; that soon after said adjudication said Sandusky returned to Illinois, after an absence of several months, during which absence his neighbors did not know and his family did not claim to know of his whereabouts; that he was present at the first and second sales of his real estate; that he advised parties to buy the effects of said estate; that he procured one William Parker to bid for him on the land belonging to his said estate at the first sale made by J. G. English, his assignee; that he from time to time consulted with the said assignee as to the best mode of selling said estate; that at the last sale of real estate belonging to said Sandusky,

127 his wife, with his knowledge and consent, bid off a large portion of said real estate; that he has filed in this court a claim, and the same was allowed and paid, for one thousand dollars in lieu of the homestead to which he is entitled under the bankrupt law; that since said adjudication the said Sandusky has visited the said George W. Parker, in the State of Indiana, and remained at his house several days, and talked fully with the said Parker as to his liability, as principal of said note, as set out in the petition of your respondents; that he urged the

said Parker to buy, and Aquila Parker did buy at his request, a portion of the real estate of the said Sandusky when sold by the assignee, J. G. English; that said Sandusky never claimed, so far as your respondents knew, that he was liable on the note due your respondents only as surety until the filing of his said petition asking a review of the proceedings in bankruptcy against him. Respondents, further answering, say that the said Sandusky advised the assignee of his estate to bring suit against various parties, and did on the 7th day of October, A. D. 1872, voluntarily appear as a witness in a suit then pending in the circuit court of the United States for the southern district of Illinois, wherein the said assignee was plaintiff, and John Falls and others were defendants, and testified in behalf of said assignee, who sued for the creditors of said
128 estate; and respondents further charge that on the 31st day of December, A. D. 1872, almost one year after the adjudication as aforesaid, the said Sandusky voluntarily appeared and was examined as a witness in the case of Jos. G. English, assignee of said estate, vs. Telford et al., now pending in this court, which examination was reduced to writing and duly sworn to and now on file in said cause, wherein the said Sandusky, in behalf of said assignee, in a suit to set aside a mortgage charged to be fraudulently executed by said Harvey Sandusky on the 10th day of August, A. D. 1871, less than 30 days prior to the filing of your respondents' petition in bankruptcy, and the said Sandusky in said written examination testifies under oath that said mortgage was executed to the said Tilford et als. for the sole purpose of evading the payment of the claim due your respondents, said mortgage being given to secure ten thousand dollars, when in point of fact he owed said Tilford twenty-five hundred dollars. Your respondents ask that said written examination now on file in said case be taken as part of this answer.

Your respondent', further answering, state that they are informed and believe, and expect to prove, that many creditors having claims against the said Sandusky have duly proved the same and filed them in the bankrupt proceedings against the said Sandusky; that said claims
129 amount to over twenty-five thousand dollars, exclusive of your respondents' claim; that the said Sandusky has not only had full knowledge of the claim due your respondents, but of other claims filed in said bankrupt proceedings; that he has stood by without offering any objection to the many claims so proved; that he has had full op'ortunity to make his defence to your respondents' claim; that at this late day he is estopped from setting up his defence. Respondents charge that he was insolvent at the time your respondents filed their petition, and was guilty of the acts of bankruptcy therein charged; that he is still insolvent; that the assets scheduled by him, being insufficient to pay his liabilities, not including the costs and expenses incurred in the proceedings in bankruptcy, wherefore your respondents ask that the prayer of his petition be refused and that your respondents be allowed their costs.

FIRST NATIONAL BANK OF INDIANAPOLIS, IND.,
By JNO. C. NEW, *Cashier.*

And witness the seal of said bank.

In the district court of the United States for the southern district of Illinois.

The answer of George W. Parker to the petition of Harvey Sandusky.

130 Respondent now and at all times hereafter saving to himself all manner of exception, benefit, & advantage that can or may be had or taken

to the many errors, uncertainties, and imperfections in the said petition contained, for himself thereto, or to so much thereof as this respondent is advised it is material or necessary for him to make answer to, answering says, that he has carefully read the answer of the First National Bank of Indianapolis, Indiana, to the said petition of the said Harvey Sandusky, and which answer is filed herewith, and he hereby adopts the same, and each and every matter and fact therein averred, as and for his own answer, as fully, completely, and entirely as though all the matters and facts therein recited were recited and stated herein; and in addition thereto he says that neither he nor Aquila Parker ever, at any time, received any part or portion of the money obtained from the First National Bank of Indianapolis, Indiana, at the time of the execution of the note to said bank or at any time thereafter; that he and said Aquila Parker signed said note in the manner in which they and each of them did sign the same for the sole accom'odation of Harvey Sandusky, who obtained and received the money, and, as this re-
131 spondent is informed and believes, thereafter used the same in discharging his individual liabilities; that the said Sandusky has on several occasions, since he has been adjudicated a bankrupt, admitted to this respondent that said sum, due the bank, was his debt, and the said Tenery, the party whose name appears to said note, has stated to this respondent and others that he was simply a surety for said Sandusky, who was the real borrower and debtor, and that he, said Tenery, got no part of said money. Your respondent further says, that he has not paid the bank any part of said indebtedness, but the whole thereof remains unpaid. Your respondent further says that said Harvey Sandusky well knew of the rendition of said judgment in the Marion circuit court long before the original petition in bankruptcy was filed in this court; that, shortly after the rendition of the same, he informed Sandusky of the fact; saw him in person, and told him and talked to him about it. Wherefore your respondent asks that the prayer of the petition of said Sandusky be refused, and that your respondent be allowed his costs, all of which your respondent verifies.

GEO. W. PARKER.

132 Subscribed and sworn to before me this 12th day of March, 1874.

FRED. KNEFLER,
U. S. Commissioner, District of Indiana.

(Endorsed:) Filed March 17th, 1874, at 9 o'clock, a. m. Geo. P. Bowen, clerk.

District court of the United States, southern district of Illinois.

The exception of Harvey Sandusky to the answers of the First National Bank of Indianapolis to the petition of the said Sandusky, filed in the matter of the petition of the said First National Bank against the said Sandusky, in bankruptcy:

The said Sandusky excepts to the said answer of the First National Bank of Indianapolis, for that, although by the said answer it is admitted that at the maturity of the note held by the said First National Bank against the said Sandusky and George H. Tenny and Aquila Parker, as joint makers, and the said George W. Parker, a complaint was filed against the said makers and endorsers in the Marion civil

circuit court of the State of Indiana, and that, without process against either the said Sandusky or against the said George H. Tenney, judgment was recovered by the said bank against the said Auquila Parker and George W. Parker, in the said Marion civil circuit court, on the 23d day of December, 1870, and long before the original petition
133 in bankruptcy was filed, yet it is not denied that no notice of the said proceedings and judgment in the said civil circuit court was ever given to the said Sandusky before or after the commencement of the said bankruptcy proceedings, and it is admitted and not denied by the said answer that the facts respecting said proceedings and judgment in the said civil circuit court were not by the said bank brought to the knowledge of this court at the time the said bank filed its said petition in bankruptcy, or at any time thereafter, and it is not denied by the said answer, but it is admitted thereby, that the said Sandusky was ignorant of the facts respecting and of the existence of the said proceedings and judgment in the said Marion civil circuit court until a short time before he filed his said petition herein, and until after the last order in the said bankruptcy proceedings before the filing of the said Sandusky's petition herein. And also for that the said answer is evasive, argumentative, and otherwise imperfect.

Wherefore the said Sandusky says the said answer of the said First National Bank is insufficient to bar or preclude the relief prayed for in the said petition of the said Harvey Sandusky.

ROSETTE & BROTHER &
HUFF & LANGDON &
BRACKETT & REILLY,
Attys. for Sandusky.

134 District court of the United States, southern district of Illinois.

IN THE MATTER OF THE PETITION IN BANKruptcy of the First National Bank of Indianapolis, Indiana,
against
HARVEY SANDUSKY.

t

The said Harvey Sandusky moves the court to strike out and reject from the files in said cause the paper writing purporting to be the answer of George W. Parker, because the said George W. Parker is not a party to the said petition in bankruptcy, nor to the petition of the said Sandusky.

ROSETTE & BROTHER,
HUFF & LANGDON, &
BRACKETT & REILLY,
Attys. for Sandusky.

(Endorsed:) Filed March 27, 1874, at 4 o'clock p. m. Geo. P. Bowen, clerk.

Notice that bankrupt will move the court to take up, &c.

In the district court of the United States for the southern district of Illinois.

To Messrs. Edwards, Stuart & Brown, of Springfield, Illinois, and Messrs. Hanna & Knefler, of Indianapolis, Indiana.

135 IN THE MATTER OF THE FIRST NATIONAL Bank of Indianapolis, Indiana, *vs.* HARVEY SANDUSKY. } In bankruptcy.

The said Edwards, Stuart & Brown, of Springfield, Illinois, & Hanna & Knefler, of Indianapolis, Indiana, as the attorneys of the said First National Bank of Indianapolis:

You are hereby, each and all, notified that on Friday morning, the 29th day of May, 1874, at the hour of 10 o'clock a. m., or on the convening of the said court on said last-named day, I shall move the said district court to take up and finally dispose of said cause in chancery, at which time you, the said First National Bank of Indianapolis, and all other parties interested in said proceedings in bankruptcy, may appear and resist or defend the same, if you see proper so to do.

Dated Danville, Illinois, this 22d day of May, 1874.

HARVEY SANDUSKY.

BRACKETT & REILLY &
HARPER & PATTERSON &
S. A. HUFF,
Attorneys of Harvey Sandusky.

(Endorsed:) Filed May 23d, 1874, at 4.10 o'clock p. m. Geo. P. Bowen, clerk.

136 In the district court of the U. S. soth. dist., Illinois.

HARVEY SANDUSKY *vs.* FIRST NATIONAL BANK OF INDIANAPOLIS.

HARVEY SANDUSKY, being first duly sworn according to law, depose and says:

Int. 1. State what you know in regard to the $12,000.00 note executed by George H. Tenny, yourself, and Aquilla Parker, endorsed George W. Parker of date, "Indianapolis, June 30, 1870. Ninety days after date we promise to pay, to the ordor of George W. Parker, twelve thousand dollars, and five per cent. thereon for attorney's fees, if suit be instituted on this note, value received, without any relief whatever from valuation or appraisement laws. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and of non-payment of this note, negotiable and payable at the First National Bank of Indianapolis, with ten per cent. interest after maturity, until paid.

"GEO. H. TENNEY.
"HARVEY SANDUSKY.
"AQUILA PARKER."

[$6. stamp.]

(Endorsed:) "Geo. W. Parker."

State, if you please, all the facts and circumstances connected
137 with the execution and delivery of said note, by whom it was executed and to whom it was delivered, and in what character each of the several parties whose names thereto appear as principals and endorser executed the same; who made the loan, if any was made, from the First National Bank of Indianapolis on which said sum of money therein represented, twelve thousand dollars, or any other sum thereon or thereby, if any sum, was procured thereon or thereby, from said bank, giving in minutiae and detail all the facts and circumstances connected with the making, giving, and delivery the said $12,000.00 note; for whose benefit the money thereon was procured from said bank, and, in short, give a detailed statement of the entire transaction connected with the loan, and the signatures of the parties to the paper and everything connected with the same.

Ans. Mr. Tenney negotiated for the money & made the loan. I went on the note as security. Aquila Parker went on the note as security, George W. Parker as endorser. The money was procured for Mr. Tenney for his purposes. It went to this use. I received the money for Mr. Tenney, and the money was coming to me from Mr. Faulds. Mr. Tenney owed this money to Mr. Faulds, and Mr. Faulds owed it to me; that is how it came that I had to receive the money. When Mr. Tenney
went to negotiate for that money, after me and him had signed the
138 note, Mr. English, president of the First National Bank of Indianapolis, told him, Mr. Tenney, he would have to get an endorser, a resident of the State of Indiana. Then Mr. Tenney came to me and told me the man he expected to go on it had gone East, and wanted to know of me if I hadn't some friends in town I could get to go on it for him. I told him that was a thing I didn't want to do. I told him if I did that, he would have to leave those stocks in the hands of those securities if I done that; those securities signed the note with me. The stocks referred to were in the Chicago and Carbon Coal Company, Tenney being the purchaser of these stocks then in my possession and belonging to Faulds, Faulds owing me, and I holding them as collateral security for Faulds' debt to me. Mr. Tenney said he would do it; to leave the stock in Mr. Parker's hands, and he told me to tell him also that he had a farm in Champaign County of 900 acres of land, and he told me to tell him, which I did tell him, that he would meet the payment of the note prompt; that there should be no trouble about it. Under them promises I went and saw the two Mr. Parkers and told them exactly what Mr. Tenny had told me. They said they would do it, but didn't want to have any trouble over it. I told them he, Mr. Tenney, was almost a stranger to me; saw him but a few times, and he
told me that he had money coming from a railroad contract
139 amounting to about twenty-five thousand dollars, which he expected to get in about sixty days, and that money and lands he owned were worth about fifty thousand dollars. Under that head they went on the note, and I left the stock in George W. Parker's hands, (nine hundred and seventy-two shares Chicago & Carbon Coal Company.) I held those stocks as security for twenty-two thousand dollars which Faulds owed me. This money was got to pay an indebtedness that I was security for to Faulds. I believed Mr. Tenney's statement to be true, and knew nothing then, or now, to the contrary. These stocks were left with them for the benefit of George and Aquila Parker; they were both on the note with me as security for Tenney. George W. and Aquila Parker were security with me on the note. It was a form of the bank in having George W. Parker sign himself as endorser. I

never knew that suit was brought or any judgment obtained against George W. and Aquila Parker on this note until a very few days before the bill in chancery was filed by me in this court to set aside the proceedings in bankruptcy, which was on the 10th day of December, 1873. A few days before I filed their bill, Mr. J. H. Telford, of La Fayette, Indiana, sent me word down that there was a judgment obtained against Aquila and George W. Parker in Marion Co., Indiana, circuit
140 court, on this note. Then I took Mr. Brackett and went to Indianapolis and got Judge Hough, of Indianapolis, and they went and examined the records and found that judgment had been obtained. It was about five days after I got the information of this judgment being rendered against Aquila and George W. Parker before I commenced this suit.

Cross-examination by Messrs. Stuart, Edwards & Brown:

X-int. 1. State if the money was paid to you by the officers of the bank over the counter of the bank; and was the note presented by you at the bank for payment?

Ans. Yes, sir.

X-int. 2. Did you reveal to Messrs. Parker's that you were only security on the note at the time you asked them to sign the same?

Ans. I did.

X-int. 3. What inducements were offered to them to sign as security?

Ans. Nothing more than friendship to me.

141 X-int. 4. Did you state to them at the time that the money was for your use and benefit?

Ans. No, sir.

X-int. 5. Did they not sign said note at your request, and for your accommodation only?

Ans. Yes, sir.

X-int. 6. Have you not stated, since the commencement of proceedings in bankruptcy in this case, to George W. Parker', that the Tenney whose name appears in said note was simply security for you; that you were the real borrower; that said Tenney got no part of the money mentioned in said note?

Ans. Never, sir.

X-int. 7. Did you not, prior to the commencement of proceedings in bankruptcy against you, have knowledge of the existence of this judgment in the State of Indiana, in Marion circuit court; and did you not have a conversation with George W. Parker in relation to said judgment before said proceedings in bankruptcy?

Ans. I never had any knowledge or any such conversation.

142 Didn't you state to the said Parker', in order to get them to sign the said note referred to, you would agree to save harmless the said Parkers from the same?

Ans. No, sir; not to my recollection.

(NOTE.—The complainant, by E. H. Brackett, esq., his solicitor, objects to each and every of the foregoing X-interrogatories propounded, except as to such questions or question as the complainant's solicitor herein examine the witness in reference thereto.)

Re-examination:

Int. 1. You say, in answer to number one of cross-examination, that the money was paid to you over the counter of the bank. Explain, in this connection, if you have any explanation to make, for whose use and benefit this money was then paid to you over the counter of the bank. Please give a full explanation, if any you have to make, who was the

principal in borrowing the money, and who were the securities upon the note, explaining the entire transaction of the loan and borrowing of this money, any why, if any reason you have to state, that you individually received the money over the counter of the bank, in-
143 stead of the other parties.

Ans. This money was got for the use of Mr. Tenney, at Tenney's request. I took the note to the bank and got the money. Mr. Tenney was the principal on the note; Messrs. Parker and myself were securities on the note. Tenney owed Faulds and Faulds owed me, and at Tenney's request I took the money to liquidate the debt existing from Tenney to Faulds and a part of the debt from Faulds to me.

HARVEY SANDUSKY.

Subscribed & sworn to before me this 28th of May, A. D. 1874.

J. T. JONES,
Special Commissioner.

By mutual consent it is agreed that the above testimony may be read in evidence on the hearing of this cause.

STUART, EDWARDS & BROWN,
Atty'. for Respondents.
BRACKETT & REILEY & HUFF & HARPER,
Complts.' Sol'cr's.

144 HARVEY SANDUSKY, being recalled by complainant, deposes and says, in answer to the following interrogatories, to wit:

Int. 1. Please state when your plea in the bankrupt proceeding was filed, demanding a jury trial; whether you authorized said plea demanding a jury trial to be filed by your attorney; and, if so, state as a matter of positive fact whether you ever authorized your attorney, or any other person whatsoever, to withdraw said plea demanding a jury trial, or had any knowledge that said plea demanding a jury trial had been withdrawn.

Ans. I never authorized my attorney to withdraw plea demanding jury trial, and never knew that it was withdrawn.

Int. 2. Mr. Sandusky, considerable has been said and charged in said petition, filed by the First National Bank of Indianapolis, about your having been insolvent and unable to pay your debts at the time said petition in bankruptcy was filed, to wit, on the 25th of August, 1871, and about your having preferred certain creditors in fraud of the bankrupt law. Now, please tell the court whether you were or were not
145 insolvent and unable to pay your debts, at the date of the filing of said petition, and whether you had, in fact, at that date or at any other date, fraudulently preferred or made sale or incumbered your property for the purpose of preferring or securing any one or more of your creditors to the prejudice of or with the intent of defrauding, any one or more of your other creditors?

Ans. I was not insolvent on the 25th of August, 1871. I have not done anything to defraud or prefer any of my creditors.

Cross-examination:

X-int. 1. Did you not employ Mr. Rosette generally to defend you in the proceedings in bankruptcy?

Ans. I did.

X-int. How much, as near as you can recollect, were you indebted to various parties at the time the petition in bankruptcy was filed against you, what part of same was due, and was the same in notes and accounts, and what property had you to pay the same other than the property in your schedule filed in this cause.

146 Ans. I owed, as near as I recollect, about $3,000.00 when petition was filed. The claim filed on this case and the note of Tincker & English for $2,000.00 were the only amounts due at the time of filing the petition. The last-mentioned note was past due about six months. I signed the note as principal, but didn't get the benefit of the money. I borrowed the money for Faulds. I had no other property than that named in my schedule.

X-int. 13. Had you been sued and a judgment obtained against you in the Vermillion circuit court on a note past due 30 days?

Ans. That is correct.

HARVEY SANDUSKY.

Subscribed & sworn to before me 28th day of May, 1874.

J. T. JONES,
Special Commissioner.

(Endorsed:) Filed May 28th, 1874, at 5 o'clock a. m. Geo. C. Bowen, clk.

United States district court, southern district of Ills.

147 J. G. ENGLISH, ASSIGNEE,
vs.
TELFORD ET ALS.
SAME
vs.
WILSON & HANNAH.
} In bankruptcy.

It is hereby agreed that the deposition of H. Sandusky, or any other witness that either party may desire to examine, may be taken in the case of English, assignee, vs. Telford et als., on the 31st of December, 1872; and in the case of English, assignee, vs. Wilson & Hannah, on the 2d of January, 1873, before John P. Norvell, U. S. com., at his office in the 1st Nat. Bk. Danville, Ills., and the same be read as evidence on the trial of the above-entitled cases.

E. S. TERRY &
STUART, EDWARDS & BROWN,
For Plaintiff.
J. E. ROSETTE & BRO.,
Atty. for Deft.

In the district court of the United States for southern district of Illinois.

JOSEPH G. ENGLISH, ASSIGNEE OF THE ESTATE of Harvey Sandusky, a bankrupt,
vs.
TELFORD ET ALS.
} In bankruptcy.

148 Deposition of Harvey Sandusky, a witness in behalf of said complainant, taken on the 31st day of December, A. D. 1872, commencing at o'clock on said day, at office of John P. Norvelle, U. S. commissioner, in the building of the First National Bank in the city of Danville, county of Vermilion, and State of Illinois, and by said John P. Norvelle, U. S. commissioner as aforesaid, taken in pursuance to the notice hereto annexed, when—present E. S. Terry, solicitor for complainant, and John E. Rosette, solicitor for defendant—

The said HARVEY SANDUSKY, having been first duly sworn to testify

Re-direct examination:

Int. 1. You state above that you executed the mortgage, and sent it to Mr. Telford; state whether or not you had prior to that made the arrangement with him to execute said mortgage.

Ans. I did.

HARVEY SUNDUSKY.

STATE OF ILLINOIS,
Vermilion County, ss:

I, John P. Norville, a United States commissioner, within and for said county, do hereby certify that the above-named Harvey Sandusky was by me first duly sworn according to law to testify to the truth, the whole truth, and nothing but the truth, relating to said cause; that his deposition was reduced to writing by me, and that the exhibit here-
156 with was handed me by said witness; that I am not counsel for either of the parties hereto; that said defendants were present by their attorney, and that said deposition was taken at my office in Danville, in the county of Vermilion and State of Illinois, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day.

Witness my hand and seal this 31st day of December, A. D. 1872.

JNO. P. NORVELL,
U. S. Commissioner.

EXHIBIT "B."

[Revenue-stamp $10.00.]

This indenture, made the 10th day of August, in the year of our Lord one thousand eight hundred and seventy-one, between Harvey Sandusky and Elizabeth Sandusky, his wife, of the county of Vermil'ion and State of Illinois, party of the first part, and J. H. Telford & Co., of Lafayette, Indiana, party of the second part. Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of ten thousand dollars, secured to be paid by one certain promissory note as follows:

"$10,000.] "LAFAYETTE, IND., *Aug.* 10, 1871.

"One year after date I promise to pay to the order of J. H. Til-
157 ford & Co., at the Second National Bank of Lafayette, ten thousand dollars, with interest at the rate of 10 per cent. per annum, value received, without any relief whatever from valuation or appraisement laws.

(Signed) "HARVEY SANDUSKY."

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said promissory note above mentioned; and, also, in consideration of the further sum of one dollar to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, their heirs and assigns forever, all of the following-described tracts or parcels of land, lying and being in the county of Vermil'ion and State of Illinois, to wit:

The south half of the east half of the southwest quarter of section thirty-four, township nineteen, range twelve (12) west, (except 19 a, here

tofore deeded to Asa Elliott, see deed record N, page 503;) also part of the southeast quarter of section 15, township nineteen, range 12,
158 beginning at the southwest corner of said southeast quarter; thence north to the Big Vermilion River; thence down said stream to the east boundary of the west half of the southeast quarter of said section; thence south with said east boundary to the Big Vermilion River; thence down said stream with east boundary of said quarter-section; thence south to the southeast quarter of said quarter-section; thence west with the south boundary of said quarter-section to the beginning, 47 a, more or less; also the undivided one-fourth part of the northeast quarter of the southeast quarter of section 27, township 19, range 12, and the southeast quarter of the southeast quarter, and the west half of the southeast quarter of section 27, township 19, range 12; the east half of the southwest quarter, the southwest quarter of the southwest quarter, the east half of the southeast quarter of section thirty-five, township nineteen, range twelve, the west half of northeast quarter, the east half of lot 2 of the northwest quarter, east half of lot 1 of northwest quarter, and east half of the southwest quarter of section 3, township eighteen, range (12) twelve.

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining.

159 And, also, all the estate, interest and claim whatsoever, in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, their heirs and assigns, and to their only proper use, benefit, and behoof. And the said Harvey Sandusky and Sandusky his wife, party of the first part, hereby expressly waive, release, relinquish, and convey unto the said party of the second part, their heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemptions of homesteads; provided always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said party of the second part, their heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned promissory note according to the true intent and meaning thereof, then, in that case, these presents and everything herein expressed shall be absolutely null and void.

160 In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

HARVEY SANDUSKY. [SEAL.]
ELIZABETH SANDUSKY. [SEAL.]

Signed, sealed, and delivered in presence of—
H. G. BOYCE.
WILLIAM M. PAYNE.

STATE OF ILLINOIS,
Vermilion County, ss:

I, H. G. Boyce, justice of the peace in and for the said county, in the State aforesaid, do hereby certify that Harvey Sandusky, is personally known to me as the same person whose name is subscribed to the foregoing mortgage, appeared before me this day in person, and acknowledged

Re-direct examination:

Int. 1. You state above that you executed the mortgage, and sent it to Mr. Telford; state whether or not you had prior to that made the arrangement with him to execute said mortgage.

Ans. I did.

HARVEY SUNDUSKY.

STATE OF ILLINOIS,
Vermilion County, ss:

I, John P. Norville, a United States commissioner, within and for said county, do hereby certify that the above-named Harvey Sandusky was by me first duly sworn according to law to testify to the truth, the whole truth, and nothing but the truth, relating to said cause; that his deposition was reduced to writing by me, and that the exhibit here-
156 with was handed me by said witness; that I am not counsel for either of the parties hereto; that said defendants were present by their attorney, and that said deposition was taken at my office in Danville, in the county of Vermilion and State of Illinois, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day.

Witness my hand and seal this 31st day of December, A. D. 1872.

JNO. P. NORVELL,
U. S. Commissioner.

EXHIBIT "B."

[Revenue-stamp $10.00.]

This indenture, made the 10th day of August, in the year of our Lord one thousand eight hundred and seventy-one, between Harvey Sandusky and Elizabeth Sandusky, his wife, of the county of Vermil'ion and State of Illinois, party of the first part, and J. H. Telford & Co., of Lafayette, Indiana, party of the second part. Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of ten thousand dollars, secured to be paid by one certain promissory note as follows:

"$10,000.] "LAFAYETTE, IND., *Aug.* 10, 1871.

"One year after date I promise to pay to the order of J. H. Til-
157 ford & Co., at the Second National Bank of Lafayette, ten thousand dollars, with interest at the rate of 10 per cent. per annum, value received, without any relief whatever from valuation or appraisement laws.

(Signed) "HARVEY SANDUSKY."

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said promissory note above mentioned; and, also, in consideration of the further sum of one dollar to them in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, their heirs and assigns forever, all of the following-described tracts or parcels of land, lying and being in the county of Vermil'ion and State of Illinois, to wit:

The south half of the east half of the southwest quarter of section thirty-four, township nineteen, range twelve (12) west, (except 19 a, here

tofore deeded to Asa Elliott, see deed record N, page 503;) also part of the southeast quarter of section 15, township nineteen, range 12,
158 beginning at the southwest corner of said southeast quarter; thence north to the Big Vermilion River; thence down said stream to the east boundary of the west half of the southeast quarter of said section; thence south with said east boundary to the Big Vermilion River; thence down said stream with east boundary of said quarter-section; thence south to the southeast quarter of said quarter-section; thence west with the south boundary of said quarter-section to the beginning, 47 a, more or less; also the undivided one-fourth part of the northeast quarter of the southeast quarter of section 27, township 19, range 12, and the southeast quarter of the southeast quarter, and the west half of the southeast quarter of section 27, township 19, range 12; the east half of the southwest quarter, the southwest quarter of the southwest quarter, the east half of the southeast quarter of section thirty-five, township nineteen, range twelve, the west half of northeast quarter, the east half of lot 2 of the northwest quarter, east half of lot 1 of northwest quarter, and east half of the southwest quarter of section 3, township eighteen, range (12) twelve.

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining.

159 And, also, all the estate, interest and claim whatsoever, in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, their heirs and assigns, and to their only proper use, benefit, and behoof. And the said Harvey Sandusky and Sandusky his wife, party of the first part, hereby expressly waive, release, relinquish, and convey unto the said party of the second part, their heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemptions of homesteads; provided always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said party of the second part, their heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned promissory note according to the true intent and meaning thereof, then, in that case, these presents and everything herein expressed shall be absolutely null and void.

160 In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

HARVEY SANDUSKY. [SEAL.]
ELIZABETH SANDUSKY. [SEAL.]

Signed, sealed, and delivered in presence of—
H. G. BOYCE.
WILLIAM M. PAYNE.

STATE OF ILLINOIS,
Vermilion County, ss:

I, H. G. Boyce, justice of the peace in and for the said county, in the State aforesaid, do hereby certify that Harvey Sandusky, is personally known to me as the same person whose name is subscribed to the foregoing mortgage, appeared before me this day in person, and acknowledged

that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said Elizabeth Sandusky, wife of the said Harvey Sandusky, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of said instrument of writing having been by me made known and fully explained to her,
161 and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements herein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, voluntarily and freely, and without the compulsion of her said husband, and that she do not wish to retract the same.

Given under my hand and seal this 11th day of August, A. D. 1871.

[SEAL.] H. G. BOYCE, *J. P.*

Filed for record the 15th day of August, A. D. 1871, at 10¼ o'clock a. m.

GEO. DILLON, *Rec'r*,
P'r J. W. LOWELL, *Dep.*

STATE OF ILLINOIS,
Vermilion County, ss:

I, Geo. Dillon, clerk of the circuit court and ex-officio recorder in & for the county & State aforesaid, do hereby certify that the above and foregoing is a true, perfect, & complete copy of a certain mortgage executed by Harvey Sandusky and Elizabeth Sandusky, his wife, to J. H. Telford & Co., of Lafayette, Indiana, bearing date the 10th day of August,
162 in the year of our Lord eighteen hundred & seventy-one, on the real estate herein described, to secure the sum of ten thousand dollars, which mortgage was duly signed and executed in conformity with the laws of the State of Illinois; said mortgage was filed in my office Aug. 15th, A. D. 1871, at the hour of 10¼ o'clock a. m., all which appears to me from mortgage record No. 12, at page 400, in my office.

Witness my hand & seal of said court at Danville, in said county, this 25th Aug., A. D. 1871.

[L. S.] GEO. DILLON,
Clk. & Rec'r.

(Endorsed:) Filed Jan'y 10, 1873. Opened Jan'y 17, 1873, at request of C. C. Brown, esq., solr. for complt.

GEO. P. BOWEN, *Clk.*

HARVEY SANDUSKY }
vs. }
FIRST NATIONAL BANK, INDIANAPOLIS, IND. }

JOSEPH G. ENGLISH, being duly sworn, deposeth and says:

No. 1. Q. What is your name, occupation, and where do you reside?

163 A. Joseph G. English, banker; reside at Danville, Ills.

2. Q. Are you acquainted with Harvey Sandusky; if so, how long have you known him, and what was his business on the 25th day of August, 1871?

A. I am; I have known him for 20 years; his occupation is that of a trader and farmer.

3. Q. State whether or not you are the assignee of the estate of Harvey Sandusky.

A. I am.

4. Q. As assignee of said estate, can you give the value of the assets coming into your hands as such assignee, the character of said assets, and the amount of debts proved against said estate?

A. From 45,000 to 50,000 *thousand* dollars; nearly 900 acres of real estate, most farm lands; it sold for about 39,000 dollars; 473 shares of Chicago & Carbon coal-stock, valued or sold for about 3,300 dollars; personal property, 150 dollars; notes and accounts to the value of about 3,000 to 5,000 dollars. This comprises all the assets of
164 said estate; the amount of debts proved against said estate, about 32,000 dollars. There is a claim of the First National Bank of Danville in addition, about 1,500 dollars; there is a claim at Lafayette, about 1,500 dollars; there is a contested claim, same place, of about 3,500 dollars; there was a claim of Nelson of 10,000 dollars that existed at the time the petition was filed, but has since been released. In the claims referred to above, as filed with the register, a contested claim that will reduce the amou't from 8,000 to 10,000 dollars. The aggregate, not counting the Indianapolis claim, will be about 40,000 dollars; quite a number of those claims will be litigated that may be reduced 2,000 or 3,000 dollars. In the $40,000 I do not include the Nelson claim of 10,000 dollars, or the bank claim at Indianapolis of 12,000 dollars; counting those against said estate there would be about 64,000 dollars.

5. Q. State, if you know, what claims against said estate, if any, were past due at the time the proceedings in bankruptcy were commenced, and whether said claims were open accounts, notes, or judgments.

A. First was a note in favor of W. H. Durleson, executed by
165 Sandusky, Gass & Hederick, as principals, for 11,230 dollars; it was past due over 30 days at time said petition in bankruptcy was filed. There was two notes filed by John P. Cook, amounting to 3,200 dollars, which were past due 30 days or upwards at the time said petition was filed. One note in favor of J. C. Short & Co. of $2,152.85, which, at the time the petition was filed, was in a judgment and an appeal taken to the supreme court, which has since been affirmed against said estate. One judgment in favor of Dent & Black, of Chicago, for $535.50 at time petition was filed.

6. Q. Have you included in the debts of said estate, as proved before the register, the claim of the 1st National Bank of Indianapolis for something over 12,000 dollars?

A. I have not.

7. Q. Have you ever had any conversation with Sandusky in relation to the claim of said bank, either before or since your election as assignee? If so, state fully said conversation or conversations, where same took place, as near as you can recollect.

A. I had some conversation with Mr. Sandusky before and
166 after my appointment of assignee at Danville, and Springfield, Ills. The con*sider*ation I cannot state definately, but about the time filing the petition in bankruptcy, we had some conversation in regard to the claim referred to, as one in which some legal proceedings had been taken at Indianapolis, but as to the exact character of these proceedings I do not think there was any definite knowledge. Some several months after I had been appointed assignee we had some further conversation, in which Mr. Sandusky wished me to send an attorney to Indianapolis, to examine all the papers and ascertain the entire facts in the case. The last conversation was probably six months before the filing of the petition in controversy.

8. Q. State whether you know Sandusky was present at the first and second sales of his real estate made by you as assignee; whether he consulted with you from time to time as to the best mode of selling said estate; whether or not his wife became a purchaser at one of those sales, with his knowledge & consent; whether or not he advised you to bring suit against various parties; and whether he voluntarily appeared as a witness in said suit so instituted; also, whether the assets of said estate will pay all the debts in full.

167 A. Sandusky was present at the first and second sales. I consulted with him at various times as to the best mode of selling the estate, & he advised with me as to such or the best mode. She (his wife) became a purchaser at one of those sales—at the 2d sale—of 305 acres of the real estate at 51 dollars per acre, with his knowledge and consent. He advised me to bring suit against various parties, and at my request appeared as a witness in one suit against Telford, &, also, English v. Falls. As to the estate paying the debt in full, my impression is that they will not pay in full, but will pay from 60 to 80 cents on the dollar; that there is contests in quite a number of cases that makes it uncertain. If the estate beat all the claims in contest it will pay all the debts in full. I have based my estimate above of 60 to 80 cents from the knowledge of the claim, as near as I can judge.

Cross-examination:

1. C. X Q. You have stated, Mr. English, on your direct examination, that these 900 or thereabout acres of land, were worth or sold for the sum of 39,000 dollars. From this I suppose you have reference

168 to the sale under the bankrupt proceedings, as also the sale exclusive of the surface, as farming lands, without regard to any coal deposit underlying the same. How are the facts in these respects?

A. My statements on my direct examination as to the value of these lands was made from the amounts said lands sold for by myself as assignee; the sale was made of the surface, without regard to minerals.

Q. Please state, Mr. English, what, in your judgment, the surface-lands, without regard to minerals of said 900 acres of land or thereabouts would have been worth, and would have brought at a fair sale and market, as between ordinary seller & buyer, without regard to bankruptcy-proceedings, on the usual terms of sale of such property, saying one-fourth down in payment, the residue secured by mortgage on the property at one, two, and three years, with interest.

A. I think if the property had been sold on one, two, and three years, with full title, clear of the wife's interest therein, & for the sur-

169 face land, that it would have brought about 10,000 dollars more than the bankrupt sale.

Re-examined:

Q. In your cross-examination you state your estimate is based on the surface-land only, and not on the coal or minerals underlying said lands. Had Mr. Sandusky, prior to petition in bankruptcy, or not, disposed of his coal and mineral rights under said lands?

(The above question and answer objected to for the reason that land-title cannot be proved by word of mouth. To prove such conveyance, or the disposal of such mineral rights, a deed must be produced to prove the same.)

A. The records & deeds of Vermillion County show that the minerals underlying a large portion of this land had been conveyed, previous to

this petition in bankruptcy, by Mr. Sandusky, and in all the rights where mineral rights had not been conveyed I sold with the lands.

JOSEPH G. ENGLISH.

170 Subscribed and sworn to before me this 29th day of May, A. D. 1874.

M. B. CONVERSE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, M. B. Converse, a commissioner of the circuit court of the United States for the southern district of Illinois, and authorized by the laws of the United States to take and certify depositions to be used in cause' pending in the courts of the United States, do hereby certify that, on the 29th day of May, A. D. 1874, at my office in the city of Springfield, in said district, personally appeared before me Joseph G. English, a witness on behalf of the respondent in a certain cause or matter pending in the district court of the United States for the southern district of Illinois, wherein Harvey Sandusky, bankrupt, is petitioner, and The First National Bank of Indianapolis, Ind., is respondent, and the said witness, having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, so far as he should be interrogated, the several questions propounded to, and answers thereto given by, him were reduced to writing in the presence of the said witness, who thereupon signed the same, as hereinbefore appears, and was then by me
171 duly sworn to the truth of his said answers. I further certify that I was attended on said day by Christopher C. Brown, esq., attorney for said respondent, The First National Bank of Indianapolis, Ind., and by Messrs. Brackett and Harper, of counsel for said Harvey Sandusky, bankrupt, petitioner.

I further certify that I am not in any manner interested in the event of the matter in controversy.

M. B. CONVERSE,
U. S. Commissioner.

Commissioner's fees, $4.00, paid by respondent.

It is agreed and stipulated that all the papers in the bankrupt proceedings of 1st Nat. Bank of Indianapolis v. Harvey Sandusky, also papers in case of Telford als. of English & Faulde, and of English, may be considered in evidence in the case.

STEWART, EDWARDS & BROWN,
Attys. for Respondent.
BRACKETT & REILEY, &
T. A. HUFF & JESSE HARPER,
Attys. of Complt.

172 (Endorsed:) Filed June 1, 1874, at 8.00 o'clock a. m. Geo. P. Bowen, clerk.

HARVEY SANDUSKY
vs.
FIRST NATIONAL BANK INDIANAPOLIS, IND.

GEO. W. PARKER, Indianapolis, Ind., being examined, testifies as follows:

1. Q. Please state your name and residence.
A. Geo. W. Parker; Indianapolis, Indiana.

2. Q. Are you acquainted with Harvey Sandusky, the plaintiff in this case? If so, how long have you known him? Are you any way related to him?

A. I am acquainted with Harvey Sandusky intimately, for 30 years; he is my first cousin.

3. Q. On the 30 June, 1870, a note for 12,000 dollars, same to have been executed by Geo. H. Tenney, Harvey Sandusky, and Aquila
173 Parker, due in 90 days after date, to you, and indorsed by you to the First National Bank of Indianapolis, Ind.; will you please state all the circumstances connected with the execution of said note?

A. On June the 30th, 1873, the date of said note, Harvey Sandusky asked me to endorse said note, at my house in Indianapolis, Ind., to enable him to obtain 12,000 dollars from the First National Bank of Indianapolis, Ind. He, Mr. Sandusky, told me that he wanted the money for his own use, and to secure me in my endorsement he left in my hands 47,000 dollars of Chicago & Carbon Coal Co. stock. I endorsed the note for Sandusky and went with him to the bank and saw him draw the amount of 12,000 dollars on the said note; that said Tenney, one of the signers of said note, I never saw or knew, and so far as I know he was not present at the time Sandusky drew the money at the bank at Indianapolis, Ind. A few days before said note was due, I received a letter from my brother, William Parker, of Catlin, Illinois, the home of Sandusky, saying that Sandusky directed him to write to me to return the stocks to him, as he would sell them and raise the 12,000 dollars to pay said note due of First National Bank Indianapolis, Ind. I inclosed the stocks to William Parker, at Catlin, Illinois, and have not seen the same since.
174 The note was not paid at maturity, and suit was instituted against me as endorser and judgment obtained against me and my brother by confession. Just after the maturity of said note I wrote to him that if he did not pay it—I wrote to him more than once—that suit would be commenced. I went to see him before judgment was taken and explained to him just what amount of attorney's fees and costs would go upon the note and urged him to pay it, and he agreed to pay it after the judgment was taken. I went again to see him in January or February. At that time he agreed to pay again and save me from all costs, and at one time paid my expenses, and further agreed if he could not pay it he would secure me in a mortgage on his farm. I wrote and told him personally at his place before he was put into bankruptcy and since he was put into bankruptcy, that the judgment had been taken against me at Indianapolis, Ind., in the Marion civil circuit court, and he never in any of these conversations claimed that he was security for Tenney, but was one of the principals on said note; that the money was obtained for his use; that he would save me harmless.

He, Mr. Sandusky, and his wife visited my house since the pro-
175 ceedings in bankruptcy and of the judgment and the bankruptcy proceedings, and the judgment against me was fully discussed, and he expressed the hope that the bankruptcy proceedings against him would pay everything in full and leave about 8,000 dollars. At the time I acted as agent for the bank, they authorized me as said agent to bring this proceeding in bankruptcy against Mr. Sandusky, they still holding their judgment against me, no part of it having been paid; the bank knowing that the money was for the use of Sandusky, would do all in their power to make the money out of him, holding their judgment against us, to be used in case they failed with Mr. Sandusky, and for the signing of said note I never received any consideration whatever, but signed it for the accommodation of Mr. Sandusky and no other.

I never concealed from Mr. Sandusky, nor did I ever intend to conceal at the time this petition in bankruptcy was filed, the fact that said claim was put in judgment; the fact that said judgment was obtained was known to the attorneys of said bank at the time this bankruptcy petition was filed, and who filed said petition for said bank, and his advice was taken in said proceeding as to the best mode of proceeding in this court in said case.

GEO. W. PARKER.

176 Subscribed and sworn to before me this 30th day of May, A. D. 1874.

M. B. CONVERSE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, M. B. Converse, a commissioner of the circuit court of the United States for the southern district of Illinois, and authorized by the laws of the United States to take and certify depositions to be used in the courts of the United States, do hereby certify that, on the 30th day of May, A. D. 1874, personally appeared George W. Parker, a witness on behalf of the respondent in a certain cause or matter now pending in the district court of the United States for the southern district of Illinois, wherein Harvey Sandusky, bankrupt, is petitioner, and the First National Bank of Indianapolis, Indiana, is respondent; that the several questions propounded to said witness, and the answers thereto given by him, were reduced to writing in the presence of the said witness, who thereupon signed the same, and was then by me duly sworn as to the truth of his said answers.

I further certify that said respondent was represented by Chris-
177 topher C. Brown, esq., who conducted the examination of said witness; that the said petitioner, Harvey Sandusky, bankrupt, was not present in person or by attorney; that I have no interest whatever in the event of the matter in controversy.

M. B. CONVERSE,
U. S. Commissioner.

Commission-fees, $2.85; paid by respondent.

(Endorsed:) Filed June 1st, A. D. 1874, at 8.00 o'clock a. m. Geo. P. Bowen, clerk.

HARVEY SANDUSKY
vs.
FIRST NATIONAL BANK, INDIANAPOLIS, IND.

Q. What is your name, occupation, and residence?

A. William Parker, of Catlin, Illinois.

Q. Do you know Harvey Sandusky; if so, how long have you known him?

A. Yes, sir; I have known him for 20 years. He is a son of my mother's brother.

178 3. Q. Do you know anything in relation to a note, executed *to* the said Sandusky and George H. Tenney and Aquila Parker, to George W. Parker, and endorsed by said George W. Parker to the First

National Bank of Indianapolis? If so, state what you may know in regard to said note.

A. I do know about said note. A short time before the note became due, Harvey Sandusky called on me at my office at Catlin. I was then in the grain-trade; he told me he had borrowed 12,000 dollars at the First National Bank of Indianapolis, and that George W. Parker had endorsed the note for him, and that he had given Geo. W. Parker Chicago & Carbon Coal Co.'s stock, amounting to 47,000 dollars, as collateral security; he further stated that he wished me to write to Geo. W. Parker and get those stocks; he had an opportunity of selling them to a Chicago man, who was to meet him at Danville for that purpose in a few days. I wrote to Geo. W. Parker for the stocks, and stated to him what Harvey Sandusky had said to me in relation to the sale of said stock; the object in the sale was to take up the note due at the First National Bank, Indianapolis, which was Sandusky's statement to me before writing. I received, in a few days afterward, the stock
179 from George W. Parker, and delivered them to Harvey Sandusky. I never saw the stocks afterwards, nor I never received from Sandusky or any other person any money on said stocks. In the spring of 1871 I received a letter from Geo. W. Parker, requesting me to see Harvey Sandusky; that a judgment had been taken against him & his brother Aquila Parker, in Marion civil circuit court, State of Indiana, on said claim, in favor of the 1st Nat. Bank, Indianapolis. I saw Harvey Sandusky and showed him the letter I received from Geo. W. Parker, which letter I have lost or destroyed. He told me, at that time, that he still expected to sell those stocks above spoken of, and would pay the claim. Either in this conversation, or some other conversation, he stated that they should never lose anything.

Q. Were you present at the assignee sale of the real estate belonging to the Sandusky estate, and did or did not you bid at said sale, and for whom did you bid?

A. I was present at that sale, and was requested by Harvey Sandusky to bid off about 312 acres of the home-place, where the house stands, for the benefit of his son. I did bid on the lands above
180 named, but there were higher bids than I was authorized by Sandusky to make; therefore did not purchase the same.

WM. PARKER.

Subscribed and sworn to before me this 30th day of May, A. D. 1874.

M. B. CONVERSE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District Illinois, ss:

I, M. B. Converse, a commissioner of the circuit court of the United States for the southern district of Illinois, and duly authorized by the laws of the United States to take and certify depositions to be used in courts of the United States, do certify that, on the 30th day of May, A. D. 1874, personally appeared William Parker, a witness on behalf of the respondent, in a certain cause pending in the district court of the United States for the southern district of Illinois, wherein Harvey Sandusky, bankrupt, is petitioner, and the First National Bank of Indianapolis, Indiana, is respondent; that the several questions propounded to said witness, and the answers thereto given by him, were reduced to writing in the presence of the said witness, who, thereupon, signed

181 the same, and was then duly sworn to the truth of his said answers, as hereinbefore appears.

I further certify that said respondent was represented by Christopher C. Brown, esq., who conducted the examination of said witness; that the said petitioner, Harvey Sandusky, bankrupt, was not present in person or by attorney; that I have no interest whatever in the event of the matters in controversy.

M. B. CONVERSE,
U. S. Commissioner.

Commissioner's fees, $1.85; paid by respondent.

(Indorsed:) Filed June 1, 1874, at 8.00 o'clock a. m. Geo. P. Bowen, clerk.

HARVEY SANDUSKY
vs.
FIRST NATIONAL BANK OF INDIANAPOLIS, IND.

AQUILA PARKER.

Q. Please state your name, occupation, and residence, and whether you are acquainted with Harvey Sandusky, complainant in this suit; and if so, how long have you known him?

182 A. Aquila Parker; am a farmer; reside in Marion County, State of Indiana. I have known Sandusky about 30 years.

2. Q. Your signature, together with the signatures of George H. Tenney & Harvey Sandusky, appears on the face of a note executed to George W. Parker, dated June 30, 1870, for 12,000 dollars, due in 90 days after date, and now owned by the First National Bank of Indianapolis, Ind. Please state fully the circumstances attending the signing of said note aforesaid.

A. Mr. Sandusky came to me at my house on my farm on the 30th of June, 1870, and asked me to sign that note. I told him that I did not like to sign that note; I did not know Mr. Tenney. He told me that there would be no danger at all, as the money was for him. Sandusky tho't if Tenney didn't meet that note when it came due that he would apply this money to take it up; he did not expect to use the money. Likewise, that George Parker, my brother, would sign the note and he would give Chicago & Carbon coal stock to the amount of 60,000 dollars as collateral security. I told him that I signed this note for him, as I did not know Mr. Tenney, but signed it solely for him. I

183 heard nothing more of the note until its maturity. I confessed, with my brother, a judgment in the Marion civil circuit court for the full amount of said note with interest.

After said judgment and before proceedings in bankruptcy were commenced, I went to Catlin, Illinois, to see Mr. Sandusky; I think it was in July, 1871; and we talked the matter over, and he told me that he would pay it; that he would go to Danville with me, make an arrangement and mortgage his farm, and make a sale of coal stocks, and would pay the debt. And he went with me there and we went to Mr. English, of First National Bank of Danville; there talked the matter over with Mr. English; had it understood within ten (10) days the money would be paid in; and Mr. English so understood it; and upon these conditions I went home, Mr. English telling me I might go home, satisfied that it would be done. I stated, while on this visit to Catlin, to Mr.

Sandusky that the First National Bank of Indianapolis had taken judgment against me, and George Parker and I wanted him to come and pay it off; that I did not want any trouble about it. He told me that I need not trouble myself about it, that I would not lose a cent. About
August, a month afterwards, finding that he had not done as he
184 said, I went back to Catlin, and saw him again, in the forenoon. He then stated to me that he would see me in the afternoon, and arrange it. I went to his house in the afternoon, but did not see him, & found that he had left home; so I returned to Indiana and got the bank to commence proceedings in bankruptcy against him. This second visit we talked about the claim being in judgment in the Marion civil circuit court; that I did not want it hanging over me, & he said he would pay it. In none of the conversations I ever had with Mr. Sandusky did he claim that he was only security on the note, but always claimed that he was the principal, and that the debt was his own, and money used for his benefit. After the proceedings in bankruptcy were commenced, I attended the sale of the assignee of the real estate of said Sandusky, and at Sandusky's request I purchased for my own use about 312 acres of the land, and now hold title to the same through the assignee, and am now in possession of the same. And at the time of the sale he told me there were about 1,000 rails on the place which he wanted me to have to fix up the place. I have not paid this judgment to the bank or
any part thereof, but they made arrangements with me not to
185 press said judgment until they could see if it could be made out of Sandusky.

AQUILA PARKER.

Subscribed and sworn to before me this 30th day of May, A. D. 1874.

M. B. CONVERSE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District Illinois, ss:

I, M. B. Converse, a commissioner of the circuit court of the United States for the southern district of Illinois, do hereby certify that on the 30th day of May, A. D. 1874, personally appeared Aquila Parker, a witness on behalf of the respondent in a certain cause pending in the district court of the United States for the southern district of Illinois, wherein Harvey Sandusky, bankrupt, is petitioner, and the First National Bank of Indianapolis, Indiana, is respondent; that the several questions propounded to the said witness, and the answers thereto given by him, were reduced to writing in the presence of the said witness, who thereupon signed the same, and was then by me duly sworn to the truth of his said answers, as hereinbefore appears.

I further certify that Christopher C. Brown appeared as attor-
186 ney for the respondent, the said First National Bank of Indianapolis, Indiana, and that the said petitioner Harvey Sandusky, bankrupt, was not present in person or by attorney; that I have no interest whatever in the event of the matter in controversy.

M. B. CONVERSE,
U. S. Commissioner.

Commissioner fees, $2.45; paid by respondent.

(Endorsed:) Filed June 1, 1874, at 8.00 o'clock a. m. Geo. P. Bowen, clerk.

Statement of John E. Rosette.

In the month of Sept., 1871, I was employed by Mr. Harvey Sandusky to attend to a case against him in the district court of the United States for the southern district of Illinois, in which the First National Bank of Indianapolis was plaintiff, and he was the deft.; the object of the suit was to declare Sandusky a bankrupt. Mr. Sandusky, Mr. English, and myself appeared before Jud'e Treat, and such proper affidavits and testimony was produced before Judge Treat as to satisfy him, and he di'solved the injunction before that time granted
187 against Mr. Sandusky so far as it related to the personal property; we also filed an answer denying the acts of bankruptcy set up in the petition of the plaintiff, and said Sandusky demanded a jury-trial of the case so far as the acts of bankruptcy was concerned, and the cause was continued until the jury term of the district court, to meet in Jan'y next. Mr. Brown then asked and obtained leave to amend his petition at that time. Mr. Sandusky, after the case was disposed, left my office with the expectation of being in Springfield at the Jan'y term for the trial of the case as I supposed. I heard nothing more of Sandusky until I heard that it was reported that he was dead—had been drowned in the lake at Chicago, Ills.—supposed that he was robbed and murdered; that was in the fall some time, I do not recollect just what time; court commenced in Jan'y, and I did not know what had become of Sandusky at that time; still supposed he was dead. I got the cause continued until late in the month of Jan'y, to see what was next to be done. Sandusky sent no word about his case, and made no preparation to try the case. I finally sent word to his son at Catlin, Ills., and he seemed to be as much in the dark as I did, but said he heard of his father, but had not seen , and did not know where he was. About the last of Jan'y Mr. Brown, the att'y for the bank, insisted upon a trial of
188 the case, and I said to Mr. Brown that I did not know what to do in the premises, but would not withdraw the answer of Sandusky to his petition in shape the petition was then in. Mr. Brown amended the petition, showing me the amendment, to which I took no exception, when Mr. Brown took judgment, and, as the papers show, I withdrew the denial and demand for a jury trial. I have no recollection of withdrawing the demand for a trial by jury, but was of the opinion that the case was tried on the new petition or amended petition in that answer. I had no authority from Sandusky to withdraw or not to withdraw the demand for a jury, only such as given out of my original employment in the case. I supposed that Sandusky was dead, as I had no knowledge of his whereabouts, or in fact that was alive. He knew nothing whatever from me about the withdrawal of the claim for a jury. The next time I saw him, Sandusky, was when I saw him in the bank of Mr. English, in Danville, Illinois, when his deposition was taken in case when English, as assignee, was plaintiff and Mr. Telford was deft., I believe about the last of December, 1872. After that, I do not now recollect the date, I read a letter, as I supposed from Mr. Sandusky, to have an allowance made
189 to him for his homestead, and filed his petition in the district court, and the amount of one thousand dollars was allowed on a petition filed by me for that purpose, and the order allowing it was sent by me to Mr. English, the assignee in the case. So far as being directed by him to withdraw the claim for a jury, as I have stated, I, of course, had no such order from him to do it, as in fact when it was done, if done at all, I had not heard from him or been authorized to do anything, only by what was said in September when he employed me. All that was done

in that matter was done on my own motion and upon my own authority, without his special knowledge or consent. I done what I supposed was for the best at the time, not knowing what his wish or desire in the matter was, or what he would have done if he had been present. I had no information from him on the subject only what transpired in September, when I saw him at my office and before the judge. We then anticipated a trial by jury, as we demanded it, and expected to have it in the course of time. Mr. Brown amended his petition and showed it to me, to which I did not object, and he took his judgment as I supposed on his
190 amended petition, which seemed at that time to be satisfactory to all parties concerned in suit so as I know or knew at that time.

JOHN E. ROSETTE.

(Endorsed:) Filed June 11, 1874, at 10 o'clock a. m. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

THURSDAY, *June* 11, 1874.

Before the Hon. Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

Now comes again the said Harvey Sandusky, by Messrs. Rosette & Brother, Huff & Langdon, and Brackett & Reilly, his attorneys, and also the First National Bank of Indianapolis, by Messrs. Hanna & Knefler, and Stuart, Edwards & Brown, its attorneys, and the court having heard the exceptions filed by the said Harvey Sandusky to the answer of the First National Bank of Indianapolis to the petition of the
191 said Sandusky to set aside the adjudication of bankruptcy entered against him in this cause, and also the motion of the said Harvey Sandusky to strike out from the files in this cause the answer of George W. Parker;

It is ordered that said exception be overruled; and it is further ordered that said motion be sustained, and that said answer of George W. Parker be stricken from the file, in this cause.

And thereupon this cause came on to be heard upon the said petition of Harvey Sandusky, the answer of the First National Bank of Indianapolis thereto, the testimony taken and filed herein, and the testimony of Harvey Sandusky, taken and filed in the case of J. E. English, assignee of Harvey Sandusky, bankrupt, vs. James E. Telford and others, which, by agreement of parties, is read in evidence upon the hearing of this cause, and the court, having heard the same and not being sufficiently advised in the premises, takes time to consider.

Order dismissing petition, &c,

In the district court of the United States for the southere district of Illinois.

FRIDAY, *June* 12, 1874.

192 Before the Hon. Samuel H. Treat, judge.

IN THE MATTER OF HARVEY Sandusky, bankrupt. } In bankruptcy.

Now comes again the said Halvey Sandusky, by Messrs. Rosette & Brother, Huff & Langdon, and Brackett & Riely, his attorneys, and also

the First National Bank of Indianapolis, by Messrs. Hanna & Knefler and Stuart, Edwards & Brown, its attorneys, and the court being sufficiently advised upon the matter heretofore submitted in the petition of the said Harvey Sandusky to set aside the adjudication of bankruptcy, entered against him in this cause, it is ordered, adjudged, and decreed that the prayer of said petition be denied, and that said petition be dismissed.

It is further ordered, adjudged, and decreed that the said First National Bank of Indianapolis do have and recover of the said Harvey Sandusky its costs by it about its defense in this behalf expended, amounting to the sum of , and that it have execution therefor.

And thereupon the said Harvey Sandusky prays an appeal to
193 the circuit court of the United States for the southern district of Illinois, which is allowed upon condition that the said Harvey Sandusky shall enter into bond to the said First National Bank of Indianapolis in the sum of five hundred dollars, with security, to be approved by the court, conditioned that he shall prosecute his said appeal with effect, and shall answer all costs and damages that shall be adjudged against if he shall fail to make good his plea.

UNITED STATES OF AMERICA:

District court of the United States for the southern district of Illinois.

IN THE MATTER OF THE PETITION OF HARVEY Sandusky to set aside and hold for nought the bankruptcy against him, which petition & bill was decided against him by said court.

To the First National Bank of Indianapolis, Indiana, and Messrs. Stuart, Edwards & Brown, att'ys for said First National Bank:

You, and each of you, are hereby notified, and each of you will hereby take notice, that the said Harvey Sandusky will, at as early a day as practicable, take the complete record of the proceedings & decree
194 of said court in the said case of the petition of said Sandusky, to set aside the decree of bankruptcy against him by the said district court, and file said complete record, duly certified in the circuit court of the United States for the southern district of Illinois, and will file with said complete record of the said district court his original bill on the chancery side of said circuit court, asking and demanding in said bill that the proceedings, findings, & decree of the said district court be reviewed and reversed, and asking for a review & reversal of the proceedings, findings, & decree of the said district court on the petition of the said Sandusky to set aside the bankruptcy declared against him, and upon the original bill & complete record thus filed in the circuit court, the said Sandusky will ask a reviewal and reversal of the decision of the said district court, of all of which you will please take notice.

S. A. HUFF,
E. H. BRACKETT,
J. HARPER,
Attys. for Sandusky.

195 We hereby acknowledge service of the foregoing notice, this 13th day of June, 1874.

STUART, EDWARDS & BROWN.

(Endorsed:) Filed June 13, 1874. Geo. P. Bowen, clerk.

In the matter of the petition or bill in chancery, filed by Harvey Sandusky against the First National Bank of Indianapolis, pending in the district court of the U. S. for the southern district of Illinois, before his honor, Judge S. H. Treat.

It is stipulated and agreed by and between the parties as follows:

1st. That on the hearing and determination of said cause by the said district court, the party against whom the decision of said court may be rendered may take an immediate appeal to the circuit court of the United States for the southern district of Illinois, and that a decision of the cause may be had by said circuit court without delay, and also that the party against whom the decision or decree of said circuit court may be had or made may proceed and take an immediate appeal to the Supreme Court of the United States, the party thus taking his
196 appeal executing bonds, to the approval of the said respective courts, in the penal sum of $500, conditioned according to law. The object and purpose of this stipulation being to secure an early determination of the cause on the merits of the same by the Supreme Court of the U. S., all matter of mere form or technicality being hereby expressly waived by the respective parties.

STUART, EDWARDS & BROWN,
Att'ys for 1st Nat. Bk. of Indianapolis.
EDW'D H. BRACKETT,
T. A. HUFF & JESSE HARPER,
Attys. for Harvey Sandusky.

(Endorsed:) Filed June 16, 1874, at 9 o'clock a. m. Geo. P. Bowen, clerk.

District court of U. S. for the southern district of Ill's.

SANDUSKY
vs.
1ST NAT. BANK OF INDIANAPOLIS.

It is agreed that, for the purpose of enabling complainant to take an appeal to the supreme court, that the clerk make a complete
197 record of all the proceedings in the case above, and also complete record of all the proceedings of 1st Nat. Bank of Indianapolis vs. Harvey Sandusky, and submit same to cir. court.

STUART, EDWARDS & BROWN,
Attys. for 1st Nat. Bank.
EDWARD H. BRACKETT,
T. A. HUFF & JESSE HARPER,
Atty. for Harvey Sandusky.

(Endorsed:) Filed June 16, 1874, at 9 o'clock a. m. Geo. P. Bowen, clerk.

UNITED STATES OF AMERICA:

District court of the United States for the southern district of Illinois.

HARVEY SANDUSKY, COMPLAINANT,
vs.
THE FIRST NATIONAL BANK OF INDIANAPOLIS, Indiana. } In chancery.

Know all men by these presents that Harvey Sandusky and John

P. Cook, both of Vermillion County, Illinois, are held and
198 firmly bound unto the above-named First National Bank of Indianapolis, Indiana, in the sum of five hundred dollars, to be paid to the said First National Bank of Indianapolis, her assigns or legal representatives. To the payment of which, well and truly to be made and done, we bind ourselves and each of us, jointly & severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seal, and dated June 16, 1874.

Whereas the above-bounden Harvey Sandusky hath prosecuted an appeal in the above-entitled cause from the final decree of the said district court for the southern district of Illinois, rendered against him by said court on the 11th day of June, 1874, to the circuit court of the United States for the southern district of Illinois to reverse the judgment and decree of the said district court rendered against in the said above-entitled cause on the day above named:

Now, therefore, the condition of this obligation is such, that if the above-named Harvey Sandusky shall well and truly prosecute to effect his said appeal, and answer all damages and costs if he shall fail
199 to make good his appeal, and fail to reverse the judgment and decree, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

HARVEY SANDUSKY.
JOHN C. COOK.

Taken and acknowledged before me this 16th day of June, A. D. 1874.
GEO. P. BOWEN, *Clerk.*

(Endorsed:) Filed June 16th, 1874. Geo. P. Bowen, clerk.

In the district court of the United States for the southern district of Illinois.

TUESDAY, *June 16th*, 1874.

Before the Hon. Samuel H. Treat, judge.

IN THE MATTER OF HARVEY SANDUSKY, bankrupt. } In bankruptcy.

Now comes Harvey Sandusky, and files his bond to the First National Bank of Indianapolis, Indiana, in the sum of five hundred dollars, with John P. Cook as surety, conditioned that the said Harvey San-
200 dusky shall prosecute to effect his appeal to the circuit court of the United States for the southern district of Illinois to reverse the decree rendered against him by this court, and to answer all damages and costs if he shall fail to make good his appeal; which said bond is approved by the court.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, do hereby certify that the foregoing are true copies of proceedings had in said court in the matter of Harvey Sandusky, bankrupt, and include all the proceedings had therein upon the petition of said Harvey Sandusky to set aside the adjudication of bankruptcy entered against him in said matter, as appears from the records and files of said court in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Springfield, in said
201 district, on this 23d day of June, A. D. 1874, and of our Independence the 98th.

[SEAL.] GEO. P. BOWEN.

Then afterwards, to wit, on the 25th day of June, in the June term of the circuit court of the United States for southern district of Illinois, the following proceedings were had in said court in said cause and entered of record, to wit:

Judgment of circuit court.

HARVEY SANDUSKY
vs.
FIRST NATIONAL BANK OF INDIANAPOLIS. } Appeal from district court.

This day came the parties, and this cause having been argued by counsel, and the court being sufficiently advised in the premises, is of opinion that the judgment of the district court be affirmed, with the costs of this court.

Whereupon the complainant prays an appeal to the Supreme Court of the United States, which is granted upon his filing a bond in the penal sum of five hundred dollars, conditioned as the law directs.

202 And afterwards, to wit, on said twenty-fifth day of June of the year last aforesaid, came again said complainant and filed in the clerk's office of said circuit court his appeal-bond herein, which said appeal-bond is in the words and figures following, to wit:

Appeal bond.

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Illinois.

HARVEY SANDUSKY, COMPLAINANT,
vs.
THE FIRST NATIONAL BANK OF INDIANAPOLIS, Indiana. } In chancery.

Know all men by these presents, that Harvey Sandusky and John P. Cook, both of Vermillion County, Illinois, are held and firmly bound unto the First National Bank of Indianapolis, Indiana, in the sum of five hundred dollars to be paid to the First National Bank of Indianapolis, her assigns or legal representatives; to the payment of which well and truly to be done, we bind ourselves and each of us,
203 jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seal, and dated June 25th, 1874.

Whereas the above-bound Harvey Sandusky hath prosecuted an appeal in the above-entitled cause from the final judgment and decree of the said circuit court for the southern district of Illinois, rendered against him by said court on the 25th day of June, 1874, to the Supreme Court of the United States, to reverse the judgment and decree of the said circuit court rendered against him in said above-entitled cause on the day above named:

Now, therefore, the condition of this obligation is such, that if the above-named Harvey Sandusky shall well and truly prosecute to effect his said appeal, and answer all damages and costs if he shall fail to make good his appeal and fail to reverse the judgment and decree, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

HARVEY SANDUSKY.
JOHN P. COOK.

Approved:

S. H. TREAT,
Dist. Judge.

(Indorsed:) Filed June 25, 1874. J. A. Jones, clerk.

204 *Certificate.*

Circuit court of the United States, southern district of Illinois.

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause, wherein Harvey Sandusky is complainant and the First National Bank of Indianapolis, Indiana, is defendant, as truly and correctly as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this twentieth day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] J. A. JONES, *Clk.*

205 UNITED STATES OF AMERICA:

In the Supreme Court of the United States: To the October term, A. D. 1874.

HARVEY SANDUSKY
vs.
THE FIRST NATIONAL BANK OF INDIANAPOLIS, Indiana.

Appealed from the circuit court of the United States for the southern district of Illinois.

Comes Harvey Sandusky, the appellant, by his counsel, Bracket & Reilly, Huff & Langdon, & Harper & Patterson, and John W. Palmer, and assign the following errors:

Assignment of Errors.

1st. The circuit court erred in affirming the judgment and decree of the district court, for the reason, as is shown by the record, that the First National Bank of Indianapolis, Indiana, was not a creditor of the appellant, having sued upon the note in the record set out, in the Marion civil circuit court of Indiana; all of which will appear & does fully appear in the records herein.

2d. The said circuit court erred in confirming the judgment and decree of the said district court, as will appear and does fully appear from the record of the case herein.

3d. The district court erred in the dismissing of the petition of the said appellant.

206 4th. The said district court erred in denying the prayer of the appellant as set forth in his petition.

5th. The district court erred in the declaring of appellant a bankrupt on the petition of the said appellee for the reason that the note, as is shown by the records, was wrongfully taken from the files of the Marion civil circuit court of Indiana for the fraudulent purpose of throwing said appellant into bankruptcy.

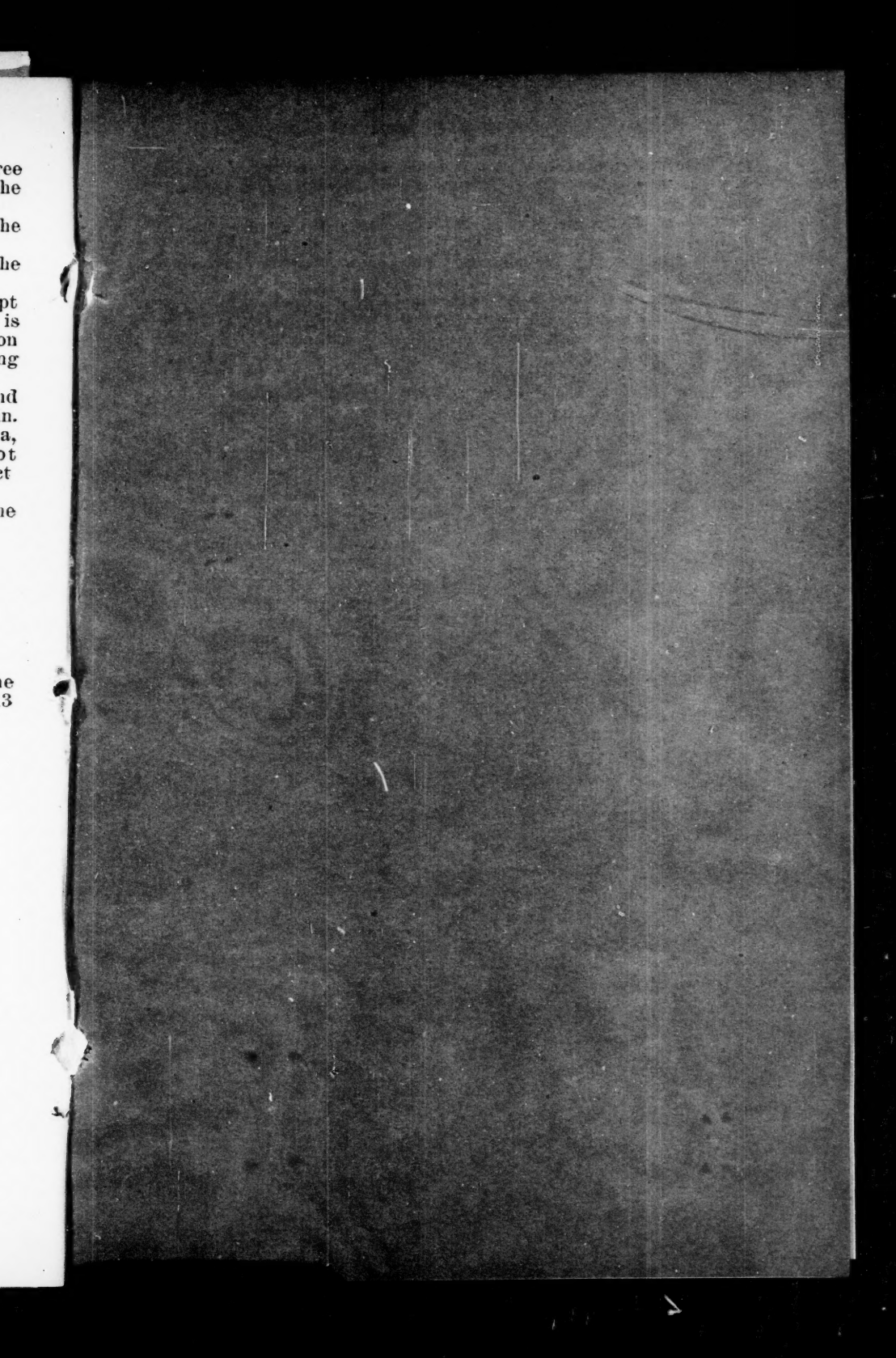
6th. The circuit court erred in not reversing the said judgment and decree of the district court, as will appear and does by the record herein.

7. The note due the First National Bank of Indianapolis, Indiana, was merged into a judgment in Marion civil circuit court, and could not be used as a note to throw appellant into bankruptcy; hence district court had no jurisdiction of the case, as the record will show.

Upon these errors the appellant askes that this court *to* reverse the case, the judgments & decrees of the said circuit court.

BRACKET & REILLY,
HUFF & LANGDON,
HARPER & PATTERSON,
J. HARPER,
JOHN W. PALMER,
Solicitors & Counsellors for Appellant.

(Indorsement on cover:) No. 724. Harvey Sandusky, appellant, *vs.* The First National Bank of Indianapolis, S. Illinois, C. C. U. S. Filed 13 November, 1874.



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1874.

HARVEY SANDUSKY
vs.
THE FIRST NATIONAL BANK OF INDIANAPOLIS. } No. 724.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS THE APPEAL FOR WANT OF JURISDICTION.

STATEMENT.

The appellee filed, August 5, 1871, in the District Court for the Southern District of Illinois, a petition against the appellant. It charged his indebtedness and his commission of an act of bankruptcy, and conformed to the requirements of the 39th section of the bankrupt act. (Record, p. 1–3.) An injunction was prayed for, and awarded at that date, restraining the appellant from making any transfer or disposition of his property, and an order, returnable on the 5th day of the following month, entered, requiring him to appear and show cause why the prayer of the petition should not be granted. A certified copy of the order and petition was served upon him.

(Record, p. 7.) On the last date the following answer was filed:

"And now on this return for the hearing of the said petition, the said Henry Sandusky appears and denies that he has committed the act of bankruptcy set forth in the said petition, and avers that he should not be declared bankrupt for any cause in said petition alleged; and he demands that the same may be inquired of by a jury.

"HENRY SANDUSKY,
"By ROSETTE & BRO.,
"*His Attorneys.*"

Record, p. 9.

And thereupon it was ordered that the issue be submitted to a jury at the ensuing January term of the court; (Record, p. 10;) and the appellant by his said attorneys made a motion to have the injunction dissolved. The court, on the 9th of September, modified the injunction so as to exclude from its operation his personal property, and the appellee asked and obtained leave to amend her petition. The amendment was filed January 23, 1872, and on the 30th of that month the following entry appears in the journal of the court:

"This cause came on to be heard at Springfield, in said court, upon the petition filed by the First National Bank of Indianapolis, of the city of Indianapolis, in the county of Marion and State of Indiana, petitioning creditor, for adjudication of bankruptcy against the said Harvey Sandusky, and thereupon came the said petitioning creditor, by Messrs. Stuart, Edwards & Brown, its attorneys; and the said Harvey Sandusky, by Messrs. Rosette & Bro., his attorneys, by leave of the court, withdrew his denial, heretofore filed, of the acts of bankruptcy alleged against him in said petition, and thereupon and upon consideration of the proofs in said cause it was found by the court that the facts set forth in said petition were true; and it is therefore adjudged that said Harvey Sandusky became a bankrupt within the true intent and meaning of the act

entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved March 2, 1867, before the filing of the said petition, and he is therefore declared and adjudged a bankrupt accordingly."

Record, p. 11.

The creditors met March 19 of that year, and chose Joseph G. English assignee, who accepted the trust and filed his bond with approved security, and a conveyance was made to him of the property and effects of the bankrupt by the register in accordance with the provisions of the act. (Record, p. 15.) The appellant filed his schedule March 3, 1873, claiming certain articles as exempt from the operation of the act, and the further sum of $1,000 in cash as a homestead exemption (Record, p. 26.) He was present at the sales of his real estate by his assignee, and consulted with the latter as to the best mode of making them; advised him to sue various parties, and was a witness in a suit brought at his suggestion by the assignee to set aside a fraudulent mortgage executed to Telford & Co., August 10, 1871, to secure a pretended debt of $10,000, when the amount due did not exceed $2,500, the object of the mortgage being, by his subsequent admission, to protect the land from his other debts. The estate will, in the opinion of the assignee, pay from 60 to 80 per cent. of the indebtedness. (Record, p. 66, and p. 60.) On the 9th of December, 1873, the appellant, by his attorneys, notified the appellee that he would, on the following day, move the court for leave to file a petition to review the proceedings and "vacate the decree of bankruptcy therein." Said motion was made, and leave having been obtained, the petition was accordingly filed. (Record, p. 30.) Certain proceedings were thereupon had and the District Court, June 12, 1874, "being sufficiently advised upon the matter

heretofore submitted in the petition of the said Harvey Sandusky to set aside the adjudication of bankruptcy entered against him in this cause, ordered, adjudged, and decreed that the petition be dismissed." The appellant thereupon prayed an appeal to the Circuit Court. On the 13th of June the following notice, signed by the attorneys of Sandusky, with the acknowledgment of service the same date by attorneys of the appellee, was filed:

"DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

"In the matter of the petition of Harvey Sandusky to set aside and hold for nought the bankruptcy against him, which petition and bill was decided against him by said court.

"*To the First National Bank of Indianapolis, Indiana, and Messrs. Stuart, Edwards & Brown, att'ys for said First National Bank:*

"You, and each of you, are hereby notified, and each of you will hereby take notice, that the said Harvey Sandusky will, at as early a day as practicable, take the complete record of the proceedings and decree of said court in the said case of the petition of said Sandusky, to set aside the decree of bankruptcy against him by the said District Court, and file said complete record, duly certified in the Circuit Court of the United States for the southern district of Illinois, and will file with said complete record of the said District Court his original bill on the chancery side of said Circuit Court, asking and demanding in said bill that the proceedings, findings, and decree of the said District Court be reviewed and reversed, and asking for a review and reversal of the proceedings, findings, and decree of the said District Court on the petition of the said Sandusky to set aside the bankruptcy declared against him, and upon the original bill and complete record thus filed in the Circuit Court, the said Sandusky will ask a reviewal and

reversal of the decision of the said District Court, of all of which you will please take notice."

Record, p. 75.

On the 16th of June the following stipulation was signed by the attorneys of the respective parties:

"H. SANDUSKY VS. FIRST NAT. BANK OF INDIANAPOLIS.

"In the matter of the petition or bill in chancery, filed by Harvey Sandusky against the First National Bank of Indianapolis, pending in the District Court of the U. S. for the southern district of Illinois, before his honor, Judge S. H. Treat.

"It is stipulated and agreed by and between the parties as follows:

"1st. That on the hearing and determination of said cause by the said District Court, the party against whom the decision of said court may be rendered may take an immediate appeal to the Circuit Court of the United States for the southern district of Illinois, and that a decision of the cause may be had by said Circuit Court without delay, and also that the party against whom the decision or decree of said Circuit Court may be had or made may proceed and take an immediate appeal to the Supreme Court of the United States, the party thus taking his appeal executing bonds, to the approval of the said respective courts, in the penal sum of $500, conditioned according to law. The object and purpose of this stipulation being to secure an early determination of the cause on the merits of the same by the Supreme Court of the U. S., all matter of mere form or technicality being hereby expressly waived by the respective parties."

Record, p. 76.

On the 25th of June, the Circuit Court affirmed the decree of the District Court, and the appellant thereupon appealed to this Court. (Record, p. 78.)

These are all the essential matters of record which bear upon the motion.

The supervisory jurisdiction vested in a Circuit Court of the United States, by the first clause of the second section of the bankrupt act of March 2, 1867, has been fully considered, and its exemption from any appellate control determined in *Morgan* v. *Thornhill*, 11 Wallace, 65; *Hall* v. *Allen*, 12 Id., 452; *Smith* v. *Mason*, 14 Id., 419; *Mead* v. *Thompson*, 15 Id., 638; *Marshall* v. *Knox*, 16 Id., 555; *Coit* v. *Robinson*, 19 Id., 274. These decisions affirm that from a decree of that court, rendered in exercising such jurisdiction in term time or in vacation, no appeal lies to this Court.

Such jurisdiction, by the terms of that clause, extends to "all cases and questions arising under the act, except when special provision is otherwise made." A touchstone is thus furnished by which to try the finality of the decree of the Circuit Court in any such case which originated in the District Court.

No special provision is made for any appellate jurisdiction over the finding and decision of a District Court on a petition in involuntary bankruptcy, and the Circuit Courts have uniformly proceeded under the authority conferred by the first clause. (*Perry* v. *Langley*, 2 Bank. Register, 596; *Farren* v. *Crawford*, Id., 602; *In re Craft*, Id., 111; *In re O'Brien*, Id 1, 176; *Sutherland* v. *Kellogg*, 2 Bissell, 405; *In re Picton*, 2 Dillon, 548.) Such a case, when the issue joined on the petition has been "tried by a jury, if the Circuit Court has any jurisdiction upon the subject, must be moved into that Court by a writ of error, as when tried by a jury the case is excluded from the special jurisdiction conferred in the first clause of the second section of the act by the very words of that clause." (*Ins. Co.* v. *Comstock*, 16 Wallace, 258.) But in *Morgan* v. *Thornhill*, *supra*, this Court says: "Such cases may be tried by the District Court without a jury,

and in that event no doubt is entertained that the case is within the supervisory jurisdiction of the Circuit Court."

The paper filed by the appellant to set aside the order declaring and adjudging him a bankrupt was in no just sense a bill of review, or an original bill in the nature of a bill of review, impeaching a decree for fraud.

A bill of review, whether brought for error of law or upon the discovery of new matter, is the commencement of a new suit, and it lies only after a final decree. A proceeding in bankruptcy from its inception to the discharge of the debtor constitutes but a single case, and, so far as relates to that case, there is but one term in the bankrupt court, (7 Bank. Reg., 145.) The paper in question contains no prayer for process, which, by the rules of this court, is an essential part of a bill in equity. It was filed in a pending and uncompleted case and belongs to the files thereof. It is analogous to a motion to set aside a default, to permit a repleader, or, if the issue has been tried by jury, to award a new trial. Now, on the return day of the notice to the debtor to show cause, the 41st section expressly enjoins upon the court, if such "notice has been served or published," to "proceed summarily to hear the allegations of the petitioner and debtor." If default be made by the latter to appear, the 42d section declares that the court shall adjudge him to be a bankrupt. The attorney who filed Sandusky's answer having subsequently withdrawn it, the court, upon the proofs adduced, found the matters set forth in the petition to be true, and adjudged accordingly. These proceedings are summary, and such in its nature must be the action of the court when they are the subject matter for revision. By the decision refusing to rescind the interlocutory order and dismissing the petition, a case is no more made for the appellate jurisdiction of the Circuit Court than if an

appeal had been taken from the order when it was originally entered.

The appropriate mode of resorting to the revisory jurisdiction of the Circuit Court is by "bill, petition, or other process." After the District Court had dismissed his petition, Sandusky conformed to the statutory regulation by notifying on the following day the appellee that he should file a bill in the Circuit Court. The record does not disclose that this was done, but the counsel of the respective parties, three days after the service of the notice, signed the stipulation set forth in a preceding page of this brief, by which "all matter of mere form or technicality" was expressly waived.

If the contemplated bill had been filed and the ruling of the District Court affirmed, the decree of the Circuit Court would not be subject to review here. This position, in view of the decided cases, is too clear for controversy.

Process, in its usual signification, is confined to writs sued out of the court, and generally addressed to its executive or ministerial officer, but it is obviously used here in a broader sense, and denotes a case stated, or any mode, by which the revisory jurisdiction may be called into exercise. May not the notice filed in the office of the clerk and transmitted as it was to the Circuit Court, with the complete record of the proceedings of the District Court, be regarded as "process?" As the object in view was to secure a "review and reversal of the decision" of the inferior court, it is submitted that the statement of the relief sought is set forth in that paper in such definite and precise terms as to perform the office of "a bill or petition," especially as no objections to its sufficiency were made by the adverse party.

It may be said that an appeal was taken to the Circuit Court and a bond filed. The same course was adopted in

Hall vs. Allen, *supra*, but this Court, considering that the Circuit Court was acting in the exercise of its supervisory jurisdiction in rendering its decree, dismissed the appeal taken therefrom. So in *Mead vs. Thompson*, *supra*, an appeal was taken to the Circuit Court by the creditor of a bankrupt from a decree of discharge granted to the latter by the District Court, and a bond was filed reciting that "he *appealed* to the Circuit Court," &c., and binding himself to "prosecute said appeal," &c. He, it is true, also filed a petition praying the Circuit Court "to review and reverse the decision and for such other and further relief as to the Court may seem just." The Court here dismissed the appeal from the Circuit Court, holding that "whatever may have been intended when the notice of an appeal was given, it is plain that the appellant sought relief afterward only by his petition for review under the first clause of the second section of the act," and "whether, if appeals had been taken from the District Court and prosecuted in the Circuit Court, an appeal would lie to this Court, need not now be determined." The remark in this connection may be hazarded that the nature and limits of the jurisdiction, and whether it should be revisory, or be strictly appellate in the full sense of the term, can also be clearly determined by the nature of the rulings made by the subordinate court and the subject-matter upon which they operate. If the notice is not process within the meaning of the act, the jurisdiction of the Circuit Court in this case, although not invoked by "bill, petition, or process," was not appellate in the sense in which that term is used in the act of 1789 and the act of 1803 regulating appeals, and consequently its exercise cannot be reviewed here. Such jurisdiction in cases under the act, except when a jury trial has been had, pursuant

to a special provision therefor, or been refused to a party thereunto entitled, is confined to four classes of cases: 1, by appeal in suits in equity; 2, by writ of error in suits at law; 3, by appeal from a decision rejecting in whole or in part the claim of a creditor; 4, by appeal from a decision allowing such claim, when the same is opposed by the assignee. The suits belonging to the first two classes are those in which concurrent original jurisdiction is also given to each court. The jurisdiction of the Supreme Court by appeal or writ of error is confined to suits at law or in equity by assignees against persons claiming adverse interests, or by such persons against assignees. This doctrine is affirmed by the concurring decisions of the courts in the several circuits. A citation of them would be superfluous, as the opinion of this Court by Mr. Justice Clifford, in the cases from 11th and 19th Wallace, *supra*, closes the door to all cavil on the subject.

If, then, the Circuit Court irregularly took jurisdiction in this case and passed a decree of affirmance, instead of dismissing the appeal, such decree is final. The practical result is the same, as the ruling of the District Court in a case confessedly within its exclusive original jurisdiction would, in either event, remain in full force and effect.

No technical objection is now made to a review of the merits of the controversy by this honorable Court, in accordance with the stipulation of counsel. But this case cannot, on a regular call of the docket, be reached until the middle of the October term, 1876, and it is obviously for the interest of all parties that this protracted litigation should be brought to a close at the earliest practicable moment. Their consent cannot give jurisdiction, if the law of the land has withheld it, and it is believed

that this Court, of its own motion, would, on the submission of the whole case, dismiss the appeal.

Impressed with this conviction I avail myself of this mode of submitting for consideration the preliminary question as to jurisdiction.

W. T. OTTO,
Attorney for the Appellee.

Supreme Court of the United States,

OCTOBER TERM, 1874.

HARVEY SANDUSKY, vs. THE FIRST NATIONAL BANK OF INDIANAPOLIS.	*Appeal from the Circuit Court of the United States for the Southern District of Illinois.*

Brief of Appellant against the motion to dismiss the appeal for want of jurisdiction.

It is not necessary to say much in opposition to the motion, as the question is a short one and can be briefly stated.

It seems to us that counsel for the appellee mistakes the object aimed at by the appellant. The proceedings before the Circuit Court, and the appeal therefrom, was *not* to determine whether Sandusky was justly indebted to the bank at Indianapolis. That question was at the time, and still is, pending before J. G. English, assignee.

The object Sandusky had in his petition was to *dismiss* the bankrupt proceedings entire, on the ground that the paper on which he was declared a bankrupt was not at the time such commercial paper, or other paper, as upon which he, or any one, could be declared a bankrupt.

The note for $12,000.00, on which he was declared a bankrupt by the bank, had been, previous to that time, sued upon in the civil circuit court of Marion county, Indiana, all four of the makers being joined in the suit.

Such proceedings were had upon the note—a *joint note*—that the case was dismissed as to Harvey Sandusky and Tennery, two of the joint-makers, and a judgment for the principal and interest taken against the other two joint makers. And they were *solvent*.

Without attempting to collect the judgment thus obtained, the bank took the note from the files and came to Illinois, and upon it had Sandusky declared a bankrupt.

Sandusky filed his petition setting up fully the facts, and asked the court to dismiss the bankrupt proceedings. His petition was dismissed by the district court, and he appealed to the circuit court. There the judgment of the district court was affirmed.

There was no judgment on the note in favor of the bank; there could not be, for the bill was not filed against the estate, but between two outside parties.

We submit that such a case is within the statute clearly, and an appeal lies to this court. The circuit court had rightful and full jurisdiction on the appeal from the district court.

The stipulation of counsel was made for the purpose of getting the case to this court in the briefest manner—not to give jurisdiction—for the jurisdiction was complete. Counsel on both sides desired to get the merits of the question to this court at the earliest possible moment; hence the agreement.

Judge Otto says he does not make the motion to avoid the merits, but that the case will not be reached till the fall of 1876. He does it to avoid delay. This is most commendable, and we heartily concur in it. We are for a trial of the merits at the earliest possible moment.

As an off-set, however, to what he says, let us suggest that the *merits* of the case of the *bank* against the *estate* of Sandusky are *not* delayed by this proceeding. In the case at bar we are attempting to dismiss the bankrupt proceedings entire. Yet, notwithstanding that, the bankrupt proceedings are not delayed, for Judge Treat has refused to enjoin the bank or Mr. English, the assignee, but allows both to go on; and the case of the bank against the estate is now being litigated. Mr. English, the assignee, refuses to allow the claim of the bank, and will resist it in court, and if he is defeated he will bring the question to this court. He will not allow the claim on the *note*, nor will he allow the judgment to be filed by the *bank*. He holds the bank must collect the judgment, and then when those who paid it come, the rights of all the parties will be determined. So there is nothing to be gained as to *time*, or otherwise, by dismissing this appeal.

The question is now properly before this court as to the right of the bank to sue *twice* on the same note. When that is decided, the case can go on below. If the appeal is dismissed the very same point in law will come up on the refusal of the assignee to allow the bank's claim; and that is to be brought here yet. So, in point of fact, the speediest way to reach the real merits is for the court to pass on the question in this record; and so counsel thought when they made their agreement to submit the merits to this court.

That the appeal is well taken between these two outside parties it seems to us there can be no doubt. This is not appealing a *part* of a bankrupt case. So the point that a bankrupt case is one entire proceeding is not now involved.

We most respectfully ask the court to look
tire record, as we think there is more in it than the brief summary set out by Judge Otto.

Every paper filed in the entire case of the bankruptcy of Sandusky, is in the record. This court has the merits before it—the main question—and if not decided now, will have to be when the final action on the note—the claim of the bank is reached, for that will come here,—whether the bank had the right to sue twice on the note will have to be passed on by this court before the matter is ended. Hence, as the question is now before the court, the shortest road out is to decide it, and this will result in the least delay possible.

The cases referred to by the learned Judge, we submit, in our judgment do not apply to this case.

Perry vs. Langley.
Farran vs. Crawford.
Southerland vs. Kellogg.

These all apply in a case where a "jury" has passed upon the facts. The same is true, mainly, in the case of Morgan vs. Thornhill. In the case of Meade vs. Thompson, the facts of that case are very different from those in the case at bar. This case was one addressed to the district *court*, no jury could intervene, and from a denial of the prayer of the petition, there was an appeal under the bankrupt law of 1867, as we view it, and certainly under the general statute allowing appeals. Therefore the appeal is properly here, and the motion ought to be denied, the merits of the question decided, and to do it *now* will end the litigation at an earlier day than can be attained in any other way.

J. HARPER,
of Counsel for Appellant.

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Gregory

v

McVeigh

This is a motion &
not among the Rec-
ord.